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USWEST

Via Courier

December 9, 1996

Mr. Steve McLellan
Washington Utilities & Transportation Commission
1300 S. Evergreen Park Drive SW
Olympia, WA 98504

RE: Docket No. UT-960323

Dear Mr. McLellan:

Enclosed for filing please find the original and six copies of the arbitrated Agreement between U S WEST and MFS, U S WEST's request for approval of that Agreement, and a Proposed Order. Please note that the agreement indicates arbitrated provisions by a vertical line in the left margin, and/or by footnote.

Service has been made on all of the parties on the master service list by same day delivery, except that both Sprint and MFS have agreed that service may be by overnight delivery.

Very truly yours,

LISA A. ANDERL

Enclosures
cc w/encls.:
Douglas Bonner
Jeffrey Goltz
Robert Manifold
Judy Endejan
Rick Goldberg

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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition for Arbitration of an Interconnection Agreement Between MFS Communications Company and U S WEST Communications, Inc. Pursuant to 47 U.S.C. Section 252.	UT-960323

U S WEST'S REQUEST FOR APPROVAL OF ARBITRATED AGREEMENT

U S WEST REQUESTS THE COMMISSION TO ADOPT, MODIFY AND REJECT THE INTERCONNECTION AGREEMENT AS SET FORTH HEREIN

INTRODUCTION

On February 8, 1996, MFS Communications Company (MFS) requested negotiations with U S WEST Communications, Inc. (U S WEST) for an agreement relating to interconnection under terms of the Telecommunications Act of 1996. On June 24, 1996, MFS filed with the Commission and served on U S WEST a petition for arbitration pursuant to 47 U.S.C. Sec. 252(b)(1). Hearings were held on September 18 and 19, 1996, at Olympia, Washington. The Arbitrator issued his report and decision on November 8, 1996. The parties were instructed to submit an agreement in accordance with that report and decision within 30 days.

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Pursuant to the procedure set forth in the Commission's policy statement in Docket No. UT-960269, U S WEST is submitting this "request for approval" of the agreement. However, as explained in greater detail below, U S WEST is requesting approval of only some of the terms, and requests modification or rejection of other provisions in the agreement.[1]

STANDARD FOR REVIEW OF ARBITRATED DECISION

The Commission has set forth, in its policy statement in Docket No. UT-960269, the requirements for submission of arbitrated and negotiated agreements. Pursuant to this policy statement, U S WEST submits this "request for approval" to describe how the arbitrated agreement should be modified by the Commission prior to approval.

Pursuant to Section 252 (e)(1), all arbitrated agreements must be submitted to the Commission for approval. The Commission must either approve or reject the agreement, with written findings as to any deficiencies. Pursuant to Section 252(e)(2)(B), an arbitrated agreement may only be rejected by the state Commission for one of two reasons. The agreement may be rejected if the Commission finds that (1) the agreement does not meet the requirements of section 251, including any FCC regulations prescribed pursuant to that section, or (2) that the agreement does not meet the requirements of section 252(d), the pricing standards for interconnection and unbundled elements.

U S WEST submits that various aspects of the arbitrator's report, and the resulting interconnection agreement, are directly contrary to the Act and must be rejected. In particular, the

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[1] Notwithstanding the filing of the proposed interconnection agreement as required by the decision, U S WEST expressly reserves all rights of action, claims, demands and remedies available to it under law as against the Commission and MFS Communications Company, Inc. relative to the decision. By filing the interconnection agreement, U S WEST does not consent to the terms of the proposed interconnection agreement. To the extent that other pending litigation and appeals, including the appeal to the Eighth Circuit of the FCC's First Order, result in further orders, decisions, and rulings that invalidate, undermine or alter any legal requirement upon which any provision of the proposed interconnection agreement was based, U S WEST expressly reserves the right to contest the validity of the agreement, or any portion thereof, either before this Commission on any other court or regulatory body having jurisdiction.

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agreement's provisio[illegible]egarding "sham unbundling" and the p[illegible]ng provisions for both wholesale services and interconnection and unbundled elements are directly contrary to the provisions of the Act. These issues are discussed below and in U S WEST's post-arbitration brief.

Under the Commission's interpretive and policy statement in Docket No. UT-960269, a party submitting a request for approval must submit "[c]omplete and specific information to enable the Commission to make the determinations required by Section 252(d) regarding pricing standards, including but not limited to supporting information for (1) the cost basis for rates for interconnection and network elements and the profit component of the proposed rate. (2) transport and termination charges; and (3) wholesale prices." If U S WEST were requesting approval of an arbitrated agreement that adopted its rates, this would be a simple task, as U S WEST's cost studies contain all of this information and have already been provided to the Commission. MFS, who would propose that the Commission accept the $13.37 loop rate, and the 21% wholesale discount, will simply not be able to comply with this requirement, as no information exists as to the cost basis for those rates.

The Commission has instructed the parties that this "request for approval" brief may reference or incorporate previously filed briefs or memoranda, and should attach copies as may be necessary for the convenience of the Commission. U S WEST believes that its position on many of the following issues is clearly stated in its post-arbitration brief. However, that post-arbitration brief is not referenced extensively in this document, and the relevant points are summarized herein. Therefore, an additional copy of that brief has not been attached.

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GENERAL MATTERS

The Pricing Provisions Violate the Terms of the Eighth Circuit's Stay Pending Judicial Review

The Act specifically required the FCC to adopt rules related to the implementation of the Act. On August 8, 1996, the FCC issued its First Interconnection Order and related rules (the "Rules"). Many parties, including U S WEST and various state commissions, sought judicial review of the Rules, claiming, among other things, that many of the particular Rules exceed the jurisdiction of the FCC and are inconsistent with the Act. These appeals were consolidated by the Multidistrict Panel for consideration by the Eighth Circuit Court of Appeals. On October 15, 1996, the Court entered a stay related to particular portions of the Rules pending final resolution of the appeals. In ordering the stay, the Eighth Circuit specifically concluded that the petitioners were likely to succeed on the merits of their appeals with respect to the pricing and "pick and choose" provisions of the FCC's Rules.

The entry of this stay by the Eighth Circuit means that, with regard to pricing, the FCC's Order has no effect. The term "stay" means to "stop, arrest, or forbear" and, in the context of an order, means to "hold it in abeyance, or refrain from enforcing it." Black's Law Dictionary (6th ed.) 1990, at 1413. An agency simply cannot proceed to act in violation of a court's stay. United States v. Wheeling-Pittsburgh Steel Corp., 818 F.2d 1077 (3d Cir. 1987) Agency action in violation of a stay is void and without legal force and effect. E.g., Hillis Motors, Inc. v. Hawaii Automobile Dealers' Assoc., 997 F.2d 581, 594 (9th Cir. 1993) Thus, the negotiations and arbitration must reflect the obligations set forth in the text of the Act, not obligations that the FCC attempted to create via the stayed Rules or the FCC's interpretations of the Act as reflected in the stayed Rules. The FCC's default and proxy prices, both for unbundled network elements and for the avoided cost discount for resale services, cannot be used or relied upon by the Arbitrator for

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purposes of setting rat In short, rates and prices must be cos sed, 47 U.S.C. § 252(d), and supported by the factual record in this proceeding.

The Eighth Circuit stated its specific intent in issuing the stay. The Court held that the harm that would be inflicted upon LECs, such as U S WEST, through reliance on the FCC's pricing rules is far greater than any harm caused to any other party by staying the Rules until the appeals can be concluded. The following statements by the Eighth Circuit clearly demonstrate the Court's intent:

> the FCC's pricing rules will derail current efforts to negotiate and arbitrate agreements under the Act, and the "pick and choose" rule will operate to further undercut any agreements that are actually negotiated or arbitrated. The inability of the incumbent LECs and the state commissions to effectively negotiate and arbitrate agreements free from the influence of the FCC's pricing rules, including the "pick and choose" rule, will irreparably injure the interests of the petitioners. If the FCC's rules are later struck down, it will be extremely difficult for the parties to abandon the influence of their previous agreements that were based on the national pricing rules and to recreate the atmosphere of free negotiations that would have existed in the absence of the FCC's dictated presumptive prices. Without a stay, the opportunity for effective private negotiations will be irretrievably lost. We initially believe that this result would be contrary to Congress's intent that these matters be resolved through negotiation and/or arbitration.
>
> . . . we are persuaded that, absent a stay, the proxy rates would frequently be imposed by the state commissions and would result in many incumbent LECs suffering economic losses beyond those inherent in the transition from a monopolistic market to a competitive one. . . . In this case, the incumbent LECs would not be able to bring a lawsuit to recover their undue economic losses if the FCC's rules are eventually overturned, and we believe that the incumbent LECs would be unable to fully recover such losses merely through their participation in the market. . . .
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> . . . If we decide to grant the stay, we recognize that the companies seeking entry into the local telephone markets will have to negotiate and arbitrate their agreements without the added leverage of the FCC's pricing rules, and assuming that the FCC's rules are later upheld, they would likely renegotiate the terms of their agreements. The inconvenience of this scenario, however, is outweighed by the harm and difficulties of its alternative, discussed in the previous section. In other words, we think that it would be easier for the parties to conform any variations in their agreements to the uniform requirements of the FCC's rules if the rules were later upheld than it would be for the parties to rework agreements adopted under the FCC's rules if the rules were later struck down.

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Iowa Utilities Board v. FCC, No. 96-3321 (8th Cir., Oct. 15, 1996) at pp. 17-19. (emphasis added.) Thus, any of the Arbitrator's recommendations that rely in any manner on the stayed proxy prices or other stayed pricing rules ignore the clear directive of the federal court that the negotiations and arbitrations proceed "free from influence of the FCC's pricing rules."

While the Arbitrator's Decision mentions the stay of the pricing sections of the FCC's Rules, it then goes on to adopt proxy prices. It is clear that portions of the Arbitrator's Decision violate the Eighth Circuit's directive that arbitrations proceed "free from the influence" of the FCC's proxy prices.

The Arbitrator's suggestions that the Commission can establish prices for the resale avoided cost discount, based on the stayed provisions of the FCC's Rules are seriously flawed. In substance, these recommendations enforce the very Rules that the federal court has determined are likely to be thrown out because they violate the Act and, therefore, may not be permitted to influence negotiations or arbitrations pending the resolution of the appeal.

In addition to the Eighth Circuit's specific rulings on likelihood of success on the merits and irreparable harm caused by reliance on the FCC's stayed Rules, the Commission must also remember that there is no independent evidentiary basis for the adoption of MFS' proxy prices in this proceeding. Any final decision of the Commission that rests on the proxy prices would be inappropriate and unenforceable.[2]

Moreover, it is not necessary for the Commission to violate the Court's order to resolve the cost and pricing issues in this proceeding. U S WEST has provided detailed cost studies that more than sufficiently support its proposed prices as the floor for the prices of unbundled network elements and other services. Those cost studies, and the resulting prices, can and should be

[2] MFS provided absolutely no evidence of what U S WEST's avoided costs would be, relying entirely on the FCC Order.

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adopted and relied upon by the Commission. MFS has provided cost studies in support of its proposals. As the Court has concluded, use of the proxy prices may irreparably harm U S WEST. No such harm results to MFS from the use of U S WEST's proposed prices.

Sham Unbundling.

U S WEST urges this Commission to reject the provisions of the interconnection agreement that permit "sham unbundling". Under the Arbitrator's Decision, MFS would be permitted to engage in sham unbundling--purchasing the equivalent of a finished service solely through the purchase of unbundled network elements at the recommended rates. This practice is not authorized by the Act and is directly contrary to the resale scheme contemplated by section 252(d)(3). The agreement should be rejected to the extent that it is thus inconsistent with the pricing standards set forth in the Act.

If Congress had intended to permit sham unbundling, it would not have included separate and distinct resale and unbundling provisions in the Act. Instead, it would have required incumbent LECs to provide resale based on cost rather than retail price less avoided costs. Sham unbundling will encourage price arbitraging, a practice that Congress did not intend to promote and that is directly at odds with the fundamental goal of the Act--establishing fair competition.

In further support of U S WEST's contention that sham unbundling is absolutely contrary to the intent of Congress is the amicus brief filed with the Eighth Circuit by four congressmen. That brief contains an excellent explanation of what Congress intended, and how the FCC's rules allowing sham unbundling circumvent that intent:

> The FCC's overreaching is well illustrated by the unbundling provisions of the FCC's rules, under which new entrants have a choice of buying retail services under one pricing formula, or buying all the network capacity needed to provide that same service under a totally different pricing formula. See Order ¶¶ 328-41. These provisions erase carefully

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drawn statutor distinctions between resale pricing, on c nand, and pricing of network elements, on the other.[3]

The Eighth Circuit's stay of the pricing provisions of the FCC order also supports a prohibition on sham unbundling. There is clearly a nexus between the provision in the order allowing sham unbundling, First Report and Order ¶ 328, and the order's pricing provisions, since sham unbundling directly affects prices. It follows, therefore, that the Eighth Circuit's stay, and its skepticism about the lawfulness of the FCC's pricing provisions, squarely calls into question the lawfulness of sham unbundling.

U S WEST thus urges the Commission to reject an interconnection agreement that allows sham unbundling. The Arbitrator's Decision on this issue prejudices U S WEST's rights in the following manner:

1. The practice of sham unbundling will prevent U S WEST from recovering the costs of the services it provides. Therefore, the Arbitrator's decision on this issue constitutes a confiscatory taking under the Fifth and Fourteenth Amendments to the United States Constitution and under the Washington Constitution.

2. Because sham unbundling will prevent U S WEST from recovering its costs, this provision violates section 252(d) of the Telecommunications Act of 1996. Therefore, the recommendation violates the applicable statute and exceeds the Arbitrator's authority under that statute.

3. The recommendation to allow sham unbundling is not based on substantial evidence in the whole record before the Arbitrator. To the contrary, the substantial evidence in the

[3] In the United States Court of Appeals, No. 96-3321 (and consolidated cases): Brief of Amici Curiae by U S Representatives Dingell, Tauzin, Boucher, and Hastert: Page 13. A complete copy of the brief is included as Attachment A.

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record substantiates th arm to U S WEST and requires that th rbitrator prohibit sham unbundling.

U S WEST is entitled to recover the costs it incurs to implement interconnection.

U S WEST will incur huge costs in implementing the requirements of the Act. It is impossible to know or even estimate at present the facilities that may need to be constructed to carry out the recommendations. It is not clear where or what MFS might want to purchase for resale, or where MFS might want to purchase unbundled elements. U S WEST has no basis for estimating whether any of the companies who have been certified will give U S WEST 10 orders a day or 10,000 or whether such orders will be in major metropolitan areas or throughout Washington, in both urban and rural areas. U S WEST has no idea whether the companies will focus instead on the purchase of unbundled elements in lieu of resale and if so, in what quantities and in what locations.

The importance of requiring MFS to pay U S WEST for facilities that do not exist and for services that exceed what U S WEST provides to itself is demonstrated by some of the examples discussed above. In short, no one knows what the full costs of implementation will be, other than that they will be extremely large. But, section 252(c) and (d) specifically mandate that the Arbitrator shall ensure that U S WEST be allowed to recover its costs for providing interconnection, services, and network elements.

III. SPECIFIC ASPECTS OF THE ARBITRATOR'S DECISION

This section discusses the issues in the same order, and using the same numbering, as the arbitrator's report and decision.

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A. Unbundled Elements.

1. Price of the Unbundled Loop.

The rate adopted by the arbitrator for an unbundled loop is MFS's proposal of $13.37, based on an FCC proxy. This rate violates the Act's mandate that U S WEST be permitted to recover its costs. If the Commission is going to adopt any interim rate, that rate should be based on U S WEST's TELRIC cost studies submitted in this docket. U S WEST's cost studies comply with the TELRIC methodology and are the most accurate predictor of forward looking costs for the unbundled loop.

The Arbitrator noted that the FCC proxy prices had been stayed by the Eighth Circuit and that there was no obligation to follow the proxies. Because the Commission has opened a separate cost docket, the arbitrator considered the question in this proceeding to involve only interim prices. Yet, as noted by the Eighth Circuit, any use of the proxies would irreparably injure U S WEST. The Commission should prevent this very kind of harm discussed by the Eighth Circuit and allow U S WEST's TELRIC cost studies to become effective immediately subject to a true-up resulting from a subsequent review of costs, should a true-up be necessary.

The arbitrator, at page 7, fn. 17, asserts the company failed to re-run its cost studies with Commission inputs, as requested by the Arbitrator in his 10th Supplemental Order. This is clearly incorrect. The 10th Supplemental Order gave U S WEST the inputs to use, represented by the Arbitrator to be the requirements of the Commission as set out in the rate case order, and these studies were run and provided. Thus, U S WEST provided precisely the cost data requested by the Arbitrator. It is manifestly arbitrary and capricious to specify the cost data the Company is to supply for the record, and then reject it for no apparent good reason. If there are to be interim rates pending the outcome of a generic cost docket, they must be based, at a minimum, on the only

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evidence of cost studi[illegible]n this record; U S WEST TELRIC stu[illegible]; with Commission specified inputs. The Commission must reject MFS' final and best offer, because it is based solely on illegal FCC proxy rates that have been stayed.

If the Commission is to likewise reject U S WEST's final and best offer, on the basis it uses for inputs in its cost studies factors contrary to past Commission directives - that are to be re-examined in the pending generic cost docket - then it must adopt U S WEST cost studies with the inputs prescribed in the 10th Supplemental order. Otherwise, its Order adopting an agreement is based on no evidence at all. The studies submitted pursuant to the 10th Supplemental order support an interim unbundled loop rate of $24.36. The studies have been completely produced, explained and, based on their representations, understood by the Staff. There can be no supportable allegations that U S WEST cost studies are a "black box" or otherwise unavailable, and therefore must be rejected on that ground. MFS expended no resources whatever on a serious examination of U S WEST's cost studies, but instead gambled and relied exclusively on patently invalid FCC proxies. U S WEST cannot be punished -- and its property confiscated by completely inadequate rates -- because of MFS' failure to produce any evidence, must less substantial evidence, in support of its position.

Confiscatory rates are not saved by labeling them interim. Under federal and state law and fundamental constitutional requirements, U S WEST is entitled to be paid its actual costs of service, including a reasonable profit, for facilities supplied to an interconnecting carrier. Interim rates based on real evidence -- U S WEST studies done on a Commission basis that will be re-examined in the generic cost docket, will at least attempt to provide a minimal level of compensation pending the adoption of procurement rates sometime next year. There is no basis to find stayed FCC proxy rates fulfill this requirement.

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Nor will MFS harmed by paying interim rates based actual, Commission-audited cost studies. U S WEST commits to true up any interim rates paid to the final rates that come out of the pending cost docket. Since U S WEST went to the major effort of providing and supporting its costs in this proceeding, it is entitled to the benefit of the doubt; not MFS, who produced nothing and made no effort.

For the reasons stated, U S WEST takes exception to the recommendation in the Arbitrator's Decision as to the rate for unbundled loops. The recommendation on this issue prejudices U S WEST's rights in the following manner:

1. The recommended rates do not allow U S WEST to recover the cost of providing unbundled elements. Therefore, the Arbitrator's decision on this issue constitutes a confiscatory taking under the Fifth and Fourteenth Amendments to the United States Constitution and under the Washington Constitution.

2. The rates for unbundled elements will not allow U S WEST to recover its costs and, hence, violate section 252 (d) of the Telecommunications Act of 1996. Therefore, adopting the recommendation would violate the applicable statute and exceeds the Arbitrator's authority under that statute.

3. The recommended rates for unbundled elements, including the unbundled loop rate of $13.37, are not based on substantial evidence in the record before the Arbitrator. To the contrary, the substantial evidence in the whole record mandates that the Arbitrator adopt the rates proposed by U S WEST, as they are the only reasonable and verifiable rates in the record.

2. Geographic Deaveraging.

The arbitrator correctly rejected MFS's proposal for deaveraged loop prices. U S WEST opposes such deaveraging until retail price deaveraging is also accomplished. Geographic

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deaveraging is not req d by any provision of the Act and wo be inconsistent with this Commission's rejection of U S WEST's proposal for deaveraged retail rates.

3. Construction (Implementation) Charges.

The arbitrator rejected U S WEST's proposal to impose implementation charges to compensate for the effort required to unbundled elements and special construction charges to recover costs of constructing facilities to serve interconnecting carriers. This decision must be rejected. If this interconnection agreement is to comply with the Act, U S WEST must be allowed to recover the costs associated with the provision of interconnection and unbundled elements. Thus, U S WEST must be allowed to charge for implementation and construction costs. The arbitrator noted that "[t]here may be some situations in which construction charges would be appropriate. . . ."

Yet U S WEST's proposal was rejected for lack of specificity. But it is just because of the lack of specificity that U S WEST must be allowed to charge these on a case by case basis. U S WEST does not know where or when or to what degree a competitor will require construction of facilities. If U S WEST is not allowed to impose these charges to recover its costs, it will be reduced to acting as an uncompensated construction company for all new entrants. The interconnection agreement should be modified to include U S WEST's provisions to charge special construction and implementation charges in appropriate circumstances.

4. Loop Installation.

The arbitrator would allow U S WEST to impose its proposed nonrecurring charges for loop installation, but adopts MFS's recommendation that those charges should be reduced for additional lines at the same wire center and on the same service order. U S WEST disagrees with the arbitrator's analysis of this issue, as there is no basis on which to conclude that the

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nonrecurring charge fc ıe loop is reduced for additional lines. ːe reduction in the nonrecurring price for additional loops may result in an under-recovery of costs and violate the provisions of section 252(d)(1)(A)(i). However, U S WEST is currently in the process of calculating and establishing a nonrecurring charge on a "first loop" and "additional loop" rate structure. U S WEST will present support for those charges in the generic cost proceeding. In the interim, U S WEST will not further challenge this provision.

5. Conditioning.

The arbitrator erred by adopting a provision on this issue contrary to that negotiated by the parties. As noted by the arbitrator, this provision was not highlighted in the joint position statement to indicate disagreement. Thus, while it may not be MFS's preferred position to pay for loop conditioning as required, it is clearly a term the parties negotiated and agreed to for purposes of this proceeding, its best and final offer, and the resulting interconnection agreement. The arbitrator should not have rejected an agreed, negotiated term. Furthermore, although the arbitrator notes that "USWC has not made a case in support of its position", this is inaccurate. The record in this proceeding is replete with testimony and evidence establishing the need for conditioning when a loop is configured with Digital Loop Carrier. (See, Tr. 315-317)

6. "Finished Service" Unbundling.

Please see the discussion above regarding sham unbundling. An interconnection agreement which allows "finished service" unbundling is contrary to the Act.

B. Resale

1. Price.

U S WEST urges the Commission to reject the 21% avoided cost discount adopted by the arbitrator. It is improperly based on the stayed FCC proxy rates, has no relationship whatsoever to

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the costs U S WEST will actually avoid in providing wholesale services as opposed to retail, and is not supported by evidence of record.

The Arbitrator adopted the MFS figure of 21% because it is "in the middle of the 17-25 percent range and also lies within the range of a majority of discounts." However, the evidence supporting the discounts used by the FCC, to which the arbitrator refers, is not on this record and it is totally inappropriate to impose a 21% discount on U S WEST with absolutely no evidence that it represents actual avoided costs.

U S WEST submitted an avoided cost study in this matter, the only one on the record. It is supported by testimony of U S WEST's experts and properly identifies, as required by the Act, those costs that will be avoided in the provision of services at wholesale as opposed to retail. U S WEST's avoided cost discounts should be adopted by the Commission as the only ones that comply with the provisions of section 252(d)(3).

Section 252(d)(3) of the Act requires the Arbitrator to determine wholesale rates "on the basis of retail rates . . . [less] costs that will be avoided by the local exchange carrier." (emphasis added). The wholesale discount in the Arbitrator's Decision is based upon MFS' determination of U S WEST's supposed avoidable costs in a resale environment; it is not based on the costs that "will be avoided." In providing a cost study based on avoidable costs, MFS relied on the FCC's endorsement of an "avoidable cost" analysis. FCC Order ¶ 912; 47 C.F.R. §51.609(b). However, the Act does not authorize basing the wholesale discount on avoidable costs, since it specifically bases the discount on "costs that will be avoided." 47 U.S.C. 252(d)(3). In addition, the stay, issued by the Eighth Circuit in Iowa Utilities Bd. v. FCC, No. 96-3321, (8th Cir., Oct. 15, 1996), casts serious doubt upon the lawfulness of setting the wholesale discount based upon avoidable costs, and prohibits use of the FCC's methodology in the negotiations and arbitrations.

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If wholesale rates for services are too low, it will encourage new entrants to engage in resale, rather than to build their own facilities. Also, if wholesale rates for services are too low, facilities-based providers will be at a competitive disadvantage as compared to resellers, and will be unable to earn an adequate return on their investment, given the risk involved. Since a healthy competitive environment will only develop if there is real facilities-based competition, the Commission should approve terms and conditions that make facilities-based competition the preferred mode of competition.

There is simply an insufficient basis in the record for the arbitrator to conclude that wholesale services should be discounted 21%. The only magic that exists in MFS's proposal is that it is closely aligned with the FCC's rules, the effect of which have been stayed by the Eighth Circuit. The Act requires the wholesale discount to be calculated by identifying the "costs that will be avoided" by the local exchange carrier. Only those costs that are actually, not potentially, avoided through the wholesale provision of services should be subtracted. Thus, costs that are "theoretically avoidable" are not relevant.

The FCC has misconstrued the very clear language in the Act by requiring the states to "objectively" determine which costs are "reasonably avoidable". The Act specifically refers to "costs that will be avoided," not costs that may theoretically be "reasonably avoidable." The FCC seems to imply that if incumbent LECs are allowed to use real "avoided" costs, they will not properly reduce expenditures. This conclusion is totally unwarranted--and the FCC's interpretation is contrary to the Act. U S WEST urges the Washington Commission to follow the clear language contained in the Act, and to set wholesale discounts based on the actual costs avoided.

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U S WEST's n. ;odology to determine avoided cost wl sale discounts complies with the requirements of the FCC Order, even where the Order oversteps the standard established by the Act. For six product categories, U S WEST identified all retail elements that are included in offering these products and determined the amount of the TELRIC for each element that will be avoided when offering service for resale. By definition, shared costs are not avoided when a specific service is offered for resale. In compliance with the FCC Order, however, U S WEST identified the portion of shared costs that could be avoided for wholesale products in each product category. Common costs are by definition also not avoided when a service is offered for resale. Again, in compliance with the FCC Order, U S WEST includes a prorated share of common costs in its determination of "avoided" costs. Although this methodology complies with the FCC Order, it is clear that this methodology overstates the costs that will be avoided when U S WEST offers wholesale services.

For the reasons stated, U S WEST urges the Commission to reject an interconnection agreement that imposes the FCC's proxy rate. The recommended rate does not allow U S WEST to recover its costs. Therefore, it would constitute a confiscatory taking under the Fifth and Fourteenth Amendments to the United States Constitution and under the Washington Constitution.

The wholesale discount rate will prevent U S WEST from recovering its costs and, hence, violates section 252 (d) of the Telecommunications Act of 1996. Therefore, the recommendation violates the applicable statute and exceeds the Arbitrator's authority under that statute.

The Arbitrator's finding that a wholesale discount rate of 21% is reasonable is not based on substantial evidence in the whole record before the Arbitrator. To the contrary, the substantial evidence in the whole record mandates that the Arbitrator adopt the rate proposed by U S WEST, as that is the only reasonable rate in the record.

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2. vices

a. Volume discounts.

The arbitrator would apply the 21% discount to already discounted packages on a "whichever is greater" basis, i.e., the reseller gets either the volume discounted package, or 21% off full retail, whichever is greater. U S WEST disagrees that any discount is applicable to an already discounted package. However, the arbitrator's "either/or" decision is certainly preferable to the imposition of a discount on top of the already discounted package.

The federal Act does not require U S WEST to offer a "double" discount. Section 251(c)(2)(A) requires U S WEST "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers." Section 252(d)(3) requires U S WEST to offer retail services to resellers at a wholesale discount, based on avoided cost. A rate that is already discounted because of volume or term commitments is a type of wholesale rate, and should not be considered a true retail rate. The law requires U S WEST to discount the standard *retail* rate, based on avoided cost--it does not require U S WEST to provide a further discount on the "already discounted" wholesale rate.

The FCC's Order concluded that incumbent LECs should be forced to offer "double" discounts on packaged and volume-discounted services, but did recognize that a LEC may have different avoided costs when it offers a service with a volume discount. FCC Order, 951. U S WEST does not agree with the FCC's interpretation that allows double discounts because it does not represent a proper interpretation of the intent of the Federal Act. In addition, the FCC's interpretation has been stayed by the Eighth Circuit. Therefore, the Commission should not require U S WEST to provide an additional discount on already discounted wholesale services.

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"Below-cost" residential service.

The arbitrator properly declines to alter the negotiated terms to which U S WEST and MFS have agreed.

c. "Grandfathered" and other services.

U S WEST agrees with the arbitrator's decision on this issue, except to the extent that it requires resale of "deregulated" services in direct contravention of the Act.

MFS may resell grandfathered services to customers already purchasing the same service from U S WEST. It may not resell grandfathered services to new customers.

The FCC's order interpreting the Act directs the state Commission to ascertain which services should be made available for resale by reference to the company's tariffs. In the FCC Order, the FCC stated that "state Commissions, incumbent LECs and resellers can determine the service that an incumbent LEC must provide at wholesale by examining that LEC's retail tariffs." FCC Order at ¶ 872. Since U S WEST's tariffs do not include deregulated services, the Arbitrator has no ability to require their resale. Further, the only services that the Act requires to be made available for resale are *telecommunications services.* Telecommunications services are very clearly and specifically defined in the Act,[4] and only those services must be offered for resale. To the extent that the arbitrator's decision purports to expand that requirement, it exceeds his authority under the Act and must be rejected.

3. Limits to "Intended or Disclosed Use".

The arbitrator rejected U S WEST's proposed language to state that basic exchange service may be resold only for its intended or disclosed use. This language is an appropriate limitation on

[4] The Act defines telecommunications as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." 47 U.S.C. § 3 (48). Telecommunications service is defined as the offering of telecommunications for a fee directly to the public . . . ." 47 U.S.C. § 3 (51). Clearly, voice mail and inside wire maintenance fall outside the scope of these definitions.

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cross-class selling and ould be included in an interconnection eement pursuant to section 251(c)(4)(B).

4. Construction Charges.

The arbitrator rejected U S WEST's proposal to impose construction charges to compensate for the construction of facilities to serve resellers. This decision must be rejected. If this interconnection agreement is to comply with the Act, U S WEST must be allowed to recover the costs associated with the provision of resold services. The discussion regarding construction charges for interconnection and unbundled elements in section II.A.3. is equally applicable to resold services from a cost recovery and policy standpoint. Again, if U S WEST is not allowed to impose these charges to recover its costs, it will be reduced to an uncompensated construction company for all new entrants. The interconnection agreement should be modified to include U S WEST's provisions to charge special construction charges in appropriate circumstances.

5. Non-recurring Charges.

The arbitrator adopted U S WEST's customer transfer charge of $55, but on a per-customer basis, not a per-line basis as U S WEST had proposed. U S WEST disagrees with this outcome as it does not allow U S WEST to recover its costs. This TELRIC based customer transfer charge has been calculated on an average, per line basis, and the amount proposed is thus appropriate for each and every line. The arbitrator's decision essentially changes the assumptions of the cost study, but does not rerun the study to determine the costs under the changed assumptions. The reduction in the customer transfer charge from a per line assessment to a per customer assessment results in an under-recovery of costs and violates the provisions of section 252(d)(1)(A)(i).

6. Joint Marketing.

The arbitrator correctly observed that this is not an issue to be decided in this arbitration.

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7. ling Cycle.

The arbitrator adopted MFS's position requiring a 90 day time certain for U S WEST to bill all amounts owed by MFS. U S WEST believes that its position, that billing will be in accordance with U S WEST's tariffs, is the most reasonable and should be adopted. U S WEST will be billing many many resellers, and has done so in the past under its tariffs. To impose a separate billing cycle for MFS (and conceivably every other carrier) would unnecessarily complicate the process and add costs, to no greater good.

C. Reciprocal Compensation.

1. Call Termination - Tandem or End Office.

The arbitrator adopted MFS's proposal that its switch is a tandem and should be compensated as such. In so doing, the arbitrator has completely failed to consider the functional aspects of the MFS switch. While concluding that the switch covers a geographic area comparable to that served by U S WEST's tandem switch, the arbitrator completely ignored the functionality test which is set forth at paragraph 1090 of the FCC Order. MFS's switch does not connect trunks to trunks, the primary function of a tandem. It does perform all of the functions of an end office switch, such a dial tone, line to line connections, and trunk to line connections.

Nor does the record demonstrate that MFS's switch serves a comparable geographic area to U S WEST's tandem. U S WEST serves each square block of an area. MFS did not and cannot demonstrate a similar serving area, much less a comparable number of customers.

Moreover, the effect of the arbitrator's decision will result in a non-reciprocal, unsymmetrical compensation scheme that is clearly not related to cost -- in violation of the Act. For example, when a U S WEST end office switch is directly interconnected to the MFS switch, U S WEST will receive end office call termination rates of 0.3141 cents per minute when MFS

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terminates a call on th S WEST end office switch. But, whe S WEST terminates a call from its end office to the MFS switch, U S WEST must pay a call termination rate of 0.5416 cents per minute of use. There is absolutely no basis for such an imbalance in the rates paid by U S WEST to MFS compared to the rates U S WEST is paid by MFS. This disparity in rates can be corrected by appropriately classifying the MFS switch as an end office switch.

By determining that MFS's switch is a tandem, the arbitrator has prevented U S WEST from gaining the benefit of tandem unbundling. Under all circumstances, U S WEST will be obligated to pay MFS tandem rates and there is no way that U S WEST can avoid the use of MFS's tandem and trunk directly to an end office. The end office and tandem rates of MFS are inextricably bundled. In contrast, MFS and other competitors can elect their serving option and either use the tandem or direct trunk to the end office. At a minimum, the Commission should maintain the symmetrical rate structure by determining that MFS's switch is an end office switch when it is directly connected to a U S WEST end office, and that it should be compensated as a tandem only when it connects to a U S WEST tandem.

2. Enhanced Services Providers.

The Commission should reject the Arbitrator's Decision regarding internet traffic. Increasingly internet traffic distorts traffic volumes because the average holding times for this type of traffic range up to twenty minutes, compared to non-internet traffic. The Commission should modify the Arbitrator's Decision as follows: until the access charge issue associated with internet traffic is settled, internet traffic should be excluded from reciprocal compensation arrangements.

3. Late Payment Charges.

U S WEST concurs with the arbitrator's decision. MFS's proposal is unreasonable and was properly rejected as disproportionate to any revenue loss that might occur.

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D. Specia. onstruction.

See discussion above.

E. Interim Number Portability.

1. Switched Access Charges.

The arbitrator's decision directs each party to issue separate bills to the IXCs for its portion of the switched access charges, based upon the functions and facilities provided by the carrier for call forwarding or termination. Unfortunately, the parties have not been able to agree on what those functions and facilities are and are thus unable to issue separate bills. The parties have submitted language in the interconnection agreement (explained in a footnote in the agreement) that is not U S WEST's preferred outcome.

U S WEST continues to contend that when it forwards a call to a ported number, it incurs the same transport and termination costs (except for loop costs) as if the call were to a U S WEST customer and number. Thus, U S WEST would retain the end office switching, a portion of the tandem switched transport, and the TIC. U S WEST will forward the CCLC to the terminating CLEC.

2. Cost Recovery.

U S WEST continues to disagree that the costs of INP should be apportioned on the basis of active local numbers, as that apportionment essentially requires that U S WEST bear all the costs. U S WEST believes that the FCC's interim number portability order constitutes an unconstitutional taking of U S WEST's property by requiring that U S WEST bear these costs with no way to recover them. The Commission should recognize that the cost causer must bear the cost of interim number portability and adopt U S WEST's position.

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F. Colloc n.

a. Quote preparation fee.

The arbitrator's decision properly allows U S WEST to recover its costs through the assessment of a quote preparation fee. This provision is in accordance with the Act and should be adopted.

b. Entrance facility.

The arbitrator properly imposed U S WEST's charge for entrance facilities, but would allow U S WEST to impose it on a per cable basis only, rather than based on per two fibers. U S WEST disagrees with this outcome as it does not allow U S WEST to recover its costs. The TELRIC based prices for entrance facilities have been calculated on the basis of two fibers, not per cable. The amount proposed is thus appropriate for two fibers. There is no cost support for this charge on a per cable basis. The arbitrator's decision essentially changes the assumptions of the cost study, but does not rerun the study to determine the costs under the changed assumptions. The reduction in the price for entrance facilities results in an under-recovery of costs and violates the provisions of section 252(d)(1)(A)(i).

c. Installation charges for EICT.

The arbitrator properly adopts U S WEST's nonrecurring charges for EICT (expanded interconnection channel termination), but does not allow U S WEST to impose these charges where a nonrecurring charge is already applicable for the unbundled loop installation. U S WEST disagrees with the arbitrator's analysis of this issue, as there is no basis on which to conclude that the nonrecurring charge for the loop also covers the nonrecurring cost for installation of the EICT. However, U S WEST is in the process of calculating and establishing a single nonrecurring charge

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for both elements, and will present support for that in the general cost proceeding. In the interim, U S WEST will not further challenge this provision.

G. Interconnection Architecture.

The Arbitrator adopted MFS's position that initial interconnection may occur only at the tandem, with end office interconnection as traffic volumes increase. The point of interconnection (POI) has complex ramifications because it determines the amount of terminating transport that U S WEST will provide to MFS. MFS argues that they should be permitted the right to establish a single POI in a LATA. This requirement unfairly and inappropriately will require U S WEST to use intraLATA toll facilities to serve MFS without compensation.

MFS and other interconnecting carriers should have at least one point of interconnection in each local calling area in which they offer facilities based local service. The way the telephone network is structured, each local calling area is a market. It is appropriate to have a standard of one POI in each local calling market so that calls within that market can be exchanged without using toll tandems and being transported over toll facilities

For example, Seattle and Bellingham are in the same LATA, but different local calling areas. When U S WEST transports a call from Seattle to Bellingham, it is compensated for the use of its toll facilities through access charges. If MFS serves a customer in Bellingham who places a call to a neighbor who is a U S WEST customer, and MFS has one POI per LATA at the U S WEST access tandem switch in Seattle, then MFS would hand this call to U S WEST at the access tandem in Seattle. U S WEST would then transport this call just like an intraLATA toll call to Bellingham. Rather than using the local tandem in Bellingham as the call normally would, it would be routed via toll trunks from the access tandem in Seattle. The toll trunks were not sized

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to handle this unnecessary backhaul traffic to complete calls between neighbors in Bellingham, and U S WEST would be compensated as if it were a local call when, in reality, it is like a toll call.

The MFS position on limiting POIs runs contrary to the language and intent of the Act and the FCC's order. The Act takes an expansive approach to POIs, allowing more choices and flexibility in establishing POIs, while MFS seeks to unilaterally restrict the number of POIs.

III. IMPLEMENTATION SCHEDULE

The implementation schedule adopted by the arbitrator is the schedule jointly proposed by the parties and is therefore acceptable and in compliance with the Act.

CONCLUSION

The interconnection agreement between U S WEST and MFS should be modified to comply with the Act as set forth herein, and approved as modified.

Dated this 9th day of December, 1996.

U S WEST COMMUNICATIONS, INC.

By _____
EDWARD T. SHAW, WSBA # 655
LISA A. ANDERL, WSBA # 13236

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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of Request For Approval of Arbitrated Agreement under the Telecommunications Act of 1996 Between U S WEST Communications, Inc. and MFS Communications Company, Inc.	)	Docket No. UT-960323 PROPOSED ORDER

This matter, having come before the Washington Utilities and Transportation Commission for approval of an arbitrated agreement under the Telecommunications Act of 1996 between U S WEST Communications, Inc. (U S WEST), and MFS Communications Company, Inc., and the WUTC having considered the requests for approval of the agreement, and the comments of interested parties, hereby finds as follows:

1. The Washington Utilities and Transportation Commission (WUTC) is an agency of the state of Washington vested by statute with the authority to regulate the rates, rules, regulations, practices, accounts, securities, and transfers of public service companies, including telecommunications companies.

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2. The W C is authorized by Section 252(e) of t. Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act"), to approve arbitrated interconnection agreements between telecommunication providers.

3. U S WEST is engaged in the business of furnishing telecommunications services, including, but not limited to, basic local exchange service to the public within the state of Washington.

4. MFS Communications Company is authorized to provide intrastate, interexchange telecommunications services and local exchange services within the state of Washington.

5. On June 24, 1996, MFS requested arbitration of an interconnection agreement with U S WEST pursuant to section 252 of the Telecommunications Act of 1996. The arbitrator entered a report and decision on November 8, 1996. The parties were required to submit an arbitrated agreement, consistent with the terms of the decision, to the Commission for approval within 30 days of November 8, 1996.

6. On December 9, 1996, U S WEST filed with this Commission a request for approval of the arbitrated interconnection agreement under the Act. U S WEST, in its request for approval, argued that the agreement should be rejected in part and modified because in its current form it does not meet the requirements of the Act or the FCC's rules.

7. Many provisions of the agreement were the result of voluntary negotiations. Those provisions do not discriminate against any other telecommunications carrier.

8. The pricing provisions, particularly those provisions which establish a loop rate of $13.37 and a wholesale discount of 21%, are not based on U S WEST's costs and do not allow U S WEST to recover its costs. Other provisions in the arbitrated decision, such as the denial of

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U S WEST's request to impose construction charges and various nonrecurring charges in appropriate circumstances, also do not allow U S WEST to recover its costs.

9. The arbitrated provision allowing sham unbundling, or finished service unbundling, allows a carrier two options for resold service. The carrier may either purchase a retail service for resale, or may purchase a finished service by ordering all of the unbundled elements that make up that service, and ask the incumbent to recombine them into the finished service.

10. MFS has not demonstrated that its switch performs a comparable function to U S WEST's tandem switch or that it serves a comparable geographic area.

11. Points of Interconnection should not be limited to a single point in a LATA unless both interconnecting parties mutually agree. Points of interconnection are to be mutually negotiated by the parties.

12. The Commission has opened a generic cost proceeding docket. Rates in the arbitrated agreements should be U S WEST's TELRIC rates using Commission cost study inputs as set out in the 10th Supplemental Order of the arbitrator in this proceeding, on an interim basis, subject to true up, until the completion of that proceeding.

CONCLUSIONS OF LAW

1. The WUTC has jurisdiction over the subject matter of this proceeding and all parties to this proceeding.

2. The negotiated provisions of the agreement are consistent with the public interest, convenience, and necessity; are consistent with applicable Washington law requirements in promoting the competitive polices embodied in RCW 80.36.300(5) and guarding against unreasonable preferences and discrimination; and, are consistent with this Commission's interconnection order.

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3. The arbitrated provisions of the agreement concerning pricing are not consistent with the criteria of Section 252(d) and are rejected. The only evidence in this proceeding to establish costs and prices for interconnection, unbundled elements, and resale avoided costs was presented by U S WEST. U S WEST proposed prices should be the prices in the interconnection agreement adopted in this matter, subject to true up after the Commission's generic proceeding.

4. The arbitrated provision allowing sham unbundling defeats the unbundled element/resale provisions contained in Sections 251 and 252(d) and is rejected.

5. The provisions which allow MFS tandem treatment of its switch are not consistent with the pricing provisions of the act regarding transport and termination pricing and are therefore rejected.

6. The arbitrated decision should be otherwise modified as set forth in U S WEST's request for approval.

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Based on the f going findings and conclusions, the C nission makes and enters the following order:

The Commission hereby ORDERS:

1. The arbitrated agreement MFS Communications Company and U S WEST Communications, Inc., filed December 9, 1996, is hereby approved as modified herein.

Dated at Olympia, Washington and effective this ___ day of _____, 199__.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Sharon L. Nelson, Chairman

Richard Hemstead, Commissioner

William R. Gills, Commissioner

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CERTIFICATE OF SERVICE

UT-960323

I hereby certify that I have this day caused to be served a copy of the Arbitrated Agreement between U S WEST and MFS, U S WEST's Request for Approval of that Agreement and a Proposed Order upon the following parties via courier or overnight delivery:

Douglas Bonner (overnight delivery)
Swidler & Berlin
3000 K Street, NW, Suite 300
Washington, D.C. 20007-5116

Jeffrey Goltz (same day delivery)
Office of the Attorney General
1400 S. Evergreen Park Drive SW
Olympia, WA 98504

Robert Manifold (same day delivery)
Office of the Attorney General
900 - 4th Avenue, #2000
Seattle, WA 98164

Judith Endejan (same day delivery)
Ater Wynne Hewitt Dodson & Skerritt
601 Union Street, Suite 5450
Seattle, WA 98101-2327

Richard Goldberg (overnight delivery)
SPRINT
1850 Gateway Drive, 7th Floor
San Mateo, CA 94404-2467

DATED this 9th day of December, 1996.

Faye G. Valley

Faye G. Valley

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IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

ATTACHMENT A

No. 96-3321
(and consolidated cases)

IOWA UTILITIES BOARD, ET AL.,

Petitioners,

v.

FEDERAL COMMUNICATIONS COMMISSION, ET AL.,

Respondents.

On Petitions for Review of an Order of the
Federal Communications Commission

**BRIEF OF AMICI CURIAE
THE HONORABLE JOHN D. DINGELL, M.C.,
THE HONORABLE W. J. (BILLY) TAUZIN, M.C.,
THE HONORABLE RICK BOUCHER, M.C., AND
THE HONORABLE DENNIS HASTERT, M.C.**

INTEREST OF AMICI CURIAE

Amici are members of Congress who have a strong institutional interest in ensuring that federal agencies correctly interpret statutory provisions and do not exceed the jurisdiction conferred on them. This interest is especially acute with respect to the Federal Communications Commission's implementation of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, in which the Commission has taken a perfectly legible statute and turned it on its head.

Amici include both Republican and Democratic members of the House Committee on Commerce, which had jurisdiction over the 1996 Act. Amici believe that if properly interpreted this legislation will open the door to fuller competition in all telecommunications markets. Because of our involvement in shaping the relevant provisions of the Telecommunications Act, and because our constituents will benefit directly from the healthy competitive environment the Act was designed to foster, amici have a particular interest in seeing that it is implemented in accord with legislative mandates.

SUMMARY OF ARGUMENT

The FCC's First Report and Order[1] is an act of extraordinary arrogance. The Order blatantly disregards congressional intent in two material respects: it asserts federal jurisdiction in areas that Congress intended to reserve for state control, and it establishes rules for the unbundling of network elements that are contrary to congressional intent, and that threaten the viability of established telecommunications networks.

In order to reach the conclusions found in the Order, the Commissioners either had to determine that they had the authority to ignore the plain intent of the peoples' elected representatives, or that Congress doesn't know enough about legislative drafting to explicitly amend sections of the law that it wanted to change.

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[1] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, FCC No. 96-325, CC Docket 96-98 (August 8, 1996) ("Order").

Apparently unbeknownst to the Commission however, Congress debated at great length about the proper allocation of state and federal responsibilities. In the end, we decided to leave regulation of most local matters, including especially the pricing of local facilities and services, to the states. To implement that design, the House/Senate conference committee added specific language clearly vesting such authority in the states. See, e.g., 47 U.S.C. § 252(d) (governing local pricing). Just as important, Congress left key provisions of the 1934 Act in place. These include § 2(b), codified at 47 U.S.C. § 152(b), which plainly states that "nothing in this Act shall be construed to apply or to give the Commission jurisdiction with respect to . . . intrastate communication service . . . ."

The Commission's foray into areas Congress reserved to the states is doubly improper because it establishes rules for the unbundling of network elements that would hamper full competition and reduce investment in local telecommunications networks. Congress deliberately crafted separate pricing methods for competitors to have access to local facilities and services, depending on whether they are facilities-based competitors or resale competitors. The purpose of this distinction was to encourage investment in telecommunications facilities and to create jobs. The Commission's rules eviscerate this important distinction by making the more attractive cost-based pricing method available to other types of competitors. The result of the Commission's failure to respect

Congress' distinction between the two types of competitors is that the pricing benefits Congress intended to inure to those who invested and created jobs will instead be available to pure resellers. The Commission adopts quick fixes that Congress rejected in favor of encouraging long-term investment and employment. The Commission's agenda must, where there is conflict, take a back seat to Congress' own plan for the industry.

ARGUMENT

I. THE TELECOMMUNICATIONS ACT PRESERVES STATE JURISDICTION OVER INTRASTATE PRICING

The Telecommunications Act did not create an entirely new federal regulatory scheme in the telecommunications area. Rather, it amended existing law in response to market developments that have rendered old monopolies obsolete. Congress drew upon more than sixty years of experience under the Communications Act of 1934 and, in particular, decided not to upset the basic jurisdictional balance of the 1934 Act.

A. The 1934 Act Assigned Jurisdiction of Intrastate Services to the States.

The Communications Act of 1934 firmly established a "system of dual state and federal regulation" of the telecommunications industry. Louisiana Public Serv. Comm'n v. FCC, 476 U.S. 355, 360 (1986). Congress created the Federal Communications Commission and granted it authority to regulate "interstate and foreign commerce" in wire and radio communication, 47 U.S.C. § 151, while leaving intrastate service to state control. To brace this divide, and

ensure that federal regulators would not encroach on a state's jurisdiction, Congress expressly denied the FCC jurisdiction over intrastate matters, except in a few enumerated instances. 47 U.S.C. § 152(b).

The proper division of federal and state power was the "'dominating controversy'" during the drafting of the 1934 Act.[2] The states were particularly concerned by the broad power that the Interstate Commerce Commission, which then regulated both railroads and interstate telecommunications, had claimed over intrastate railroad rates as an incident of regulating interstate rates. See Houston & Texas Ry. v. United States, 234 U.S. 342 (1914); Wisconsin R.R. Comm'n v. Chicago, B & R R.R., 257 U.S. 563 (1922). State authorities feared that if the new federal communications agency were given the same power that the ICC had, they would be displaced from the field of telecommunications.[3]

Congress responded with § 2(b) of the 1934 Act. Section 2(b) provided in 1934, as it does today, that "nothing in this Act shall be construed to apply or to give the [FCC] jurisdiction with respect to . . . charges, classifications, practices, services,

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[2]Louisiana PSC, 476 U.S. at 372 (quoting Richard McKenna, "Preemption Under the Communications Act," 37 Fed. Comm. L.J. 1, 2 (1985)).

[3]See, e.g., Hearings on H.R. 8301 Before the House Committee on Interstate and Foreign Commerce, 73rd Cong., 2d Sess. 136 (1934) (statement of John E. Benton), reprinted in A Legislative History of the Communications Act of 1934, at 482 (Paglin ed., 1989); id. at 74 (statement of Mr. Clardy); Hearings on S. 6 Before the Senate Interstate Commerce Committee, 71st Cong., 2d Sess. 2179 (1930).

facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier." 47 U.S.C. § 152(b). The provision straightforwardly "reserves to the States exclusive jurisdiction over intrastate telephone and telegraph communication." S. Rep. No. 781, 73d Cong., 2d Sess. 3 (1934).

Consistent with this legislative intent, the Supreme Court held in Louisiana PSC that § 2(b) "fences off from FCC reach or regulation intrastate matters -- indeed, including matters 'in connection with' intrastate service." 476 U.S. at 370. The Court explained that any attempt by the FCC to regulate intrastate matters, even to effectuate a federal policy, would constitute an agency conferring power on itself. "To permit an agency to expand its power in the face of a congressional limitation on its jurisdiction would be to grant to the agency power to override Congress." Id. at 374-75. This the Court was "both unwilling and unable to do." Id. at 375.

B. The Telecommunications Act Preserves the States' Authority to Regulate Intrastate Communications.

Since 1934, the FCC by and large has respected the limitation that § 2(b) places on its jurisdiction. Even under the 1996 Act, it generally admits that "in the absence of a grant of authority to the Commission, State and local regulators retain jurisdiction over intrastate matters." Memorandum Opinion and Order, In re Classic Telephone, Inc., CCBPol 96-10, ¶ 24 (FCC Oct. 1, 1996). Yet the FCC apparently thought it could get around this basic principle in

its Order. While conceding that the 1996 Act does not explicitly grant it authority over local interconnection and pricing, the FCC contends that Congress implicitly "expand[ed] the applicability of . . . national rules to historically intrastate issues." Order ¶¶ 83-84. Nothing is further from the truth.

There was no general effort to expand federal power through the 1996 Act. Rather, Congress was concerned with limiting federal regulation.[4] Thus, members carefully considered the proper limits of federal and state jurisdiction. Where it wanted to give the FCC authority in areas of traditional state responsibility, Congress said so. For example, §§ 251(b)(2) and (d)(2) give the FCC authority to draw up rules concerning local number portability and network unbundling, respectively. Likewise, as explained below, Congress indicated when regulatory powers should be exercised exclusively by the states. In particular, Congress did not silently transfer the states' traditional responsibility to set prices for local services to federal regulators.

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[4] See 141 Cong. Rec. H4521 (daily ed. May 3, 1995) (statement of Rep. Bliley) (proposed legislation would "substantially reduce Federal regulations of telecommunications" and largely would be "administered locally rather than federally"); 141 Cong. Rec. S8198 (daily ed. June 12, 1995) (statement of Sen. Pressler) ("It is time we reduced the federal bureaucracy. . . . Inside the beltway, these agencies grow and grow and they do not want to give up their turf."); 142 Cong. Rec. H1150 (daily ed. Feb. 1, 1996) (statement of Rep. Goss) (Act will "reduce Federal involvement in decisions that are best made by the free market").

First, Congress determined to keep § 2(b), and hence the Louisiana PSC decision, intact.[5] This determination was deliberate. Congress knows how to amend § 2(b) to carve out specified intrastate services from its broad scope. For example, when Congress drew up provisions relating to telecommunications services for hearing- and speech-impaired individuals under the Americans with Disabilities Act, it amended the first clause of § 2(b) so that those provisions would cover intrastate services. See Pub. L. 101-336, Title IV, § 401(b)(1), 104 Stat. 369 (1990). Congress similarly amended § 2(b) in 1991 and 1993 when imposing federal restrictions on telephone dialing equipment and regulation of mobile services, respectively.[6]

In 1996, the House and Senate conferees decided, after much debate, not to establish a similar carve-out from state jurisdiction in the new telecommunications law. Both the House and Senate bills would have added Part II, Title II of the amended Communications Act (which includes the interconnection, resale, and unbundling requirements) to the list of provisions carved from § 2(b)'s scope.[7] But the conferees deleted that language. This

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[5] See Lorillard v. Pons, 434 U.S. 575, 580 (1978) ("Congress is presumed to be aware of . . . [a] judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change.").

[6] See Pub. L. 102-243, § 3(b), 105 Stat. 2401 (1991) & 47 U.S.C. § 227; Pub. L. 103-66, Title VI, § 6002(b)(2)(B)(I), 107 Stat. 396 (1993) & 47 U.S.C. § 332(c)(3)(A).

[7] See H.R. 1555, 104th Cong., 1st Sess. § 101(e)(1) (1995); S. 652, 104th Cong., 1st Sess. § 101(c)(2) (1995).

Court should respe the conferees' decision d reject the FCC's claim that § 2(b) was implicitly amended.[8]

Indeed, the conferees specifically addressed whether federal or state rules would be used to resolve disputes regarding the terms and prices of interconnection, unbundling, and resale. Under the House bill's proposed § 242(a)(2), local carriers were required "to offer unbundled services, elements, features, functions, and capabilities whenever technically feasible, at just, reasonable, and nondiscriminatory prices and in accordance with [proposed] subsection [242](b)(4)." Proposed subsection (b)(4), in turn, authorized the FCC to promulgate regulations implementing section 242's guidelines for interconnection and pricing. H.R. 1555, 104th Cong., 1st Sess. § 101(a) (1995). State commissions would merely "supervis[e]" the private negotiations. Id. (proposed § 242(a)(8)). The Senate bill, by contrast, gave the state commissions responsibility to "resolve" open issues and "impose[e] appropriate conditions upon the parties" in arbitration proceedings, S. 652, 104th Cong., 1st. Sess. § 101(a) (1995) (proposed § 251(d)(5)(C)), subject to FCC regulations.[9]

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[8] See Gulf Oil Corp. v. Copp Paving Co., 419 U.S. 186, 199-200 (1974) (deletion of a provision by a conference committee "militates against a judgment that Congress intended a result that it expressly declined to enact"); North Haven Board of Educ. v. Bell, 456 U.S. 512, 528 (1982) (deleting a provision of the House and Senate bills was a "conscious choice" by Congress).

[9] See S. Rep. No. 23, 104th Cong., 1st Sess. 21 (1995) ("the solution imposed by a State must be consistent with the FCC's rules"); S. 652, § 101(a) (proposed § 251(i)(1)) (requiring FCC to issue regulations).

Procedurally, the conferees largely allowed the Senate approach. Where local competitors can resolve their differences through private negotiations, they are left to do so, subject only to a state determination that the final agreement is nondiscriminatory and consistent with the public interest. 47 U.S.C. § 252(e)(2)(A). But where the terms and prices of interconnection cannot be resolved through private negotiations, either party can ask "a State commission" to mediate differences, id. § 252(a)(2), or to arbitrate any open issues, id. § 252(b). If the parties select arbitration, the Act provides rules, including pricing standards, for the "State commission" to follow. Id. § 252(c),(d).

The final version of the law vests much more substantive authority in the state commissions than either the House or the Senate bill. Consistent with the Senate approach, § 252(c)(1) of the Act requires state commissions, as a general matter, to conduct arbitrations in a manner that "meets the requirements of section 251, including the regulations prescribed [by the FCC] thereunder." But the very next subsection of the Act establishes a special rule for pricing: It instructs state arbitrators "to establish any rates for interconnection, services, or network elements according to subsection (d)," without any reference to Commission regulations. 47 U.S.C. § 252(c)(2).

Section 252(d) confirms the states' responsibility for pricing. Subsection 252(d)(1) provides that "a State commission," in determining "the just and reasonable rate" for interconnection or

network elements, should ensure that the rates are "nondiscriminatory" and "based on the cost . . . of providing the interconnection or network element" and "may include a reasonable profit." Subsection (d)(2) provides guidance regarding so-called "reciprocal compensation," where carriers pass calls back and forth between their networks. Subsection (d)(3) specifies that "a State commission" is to determine wholesale rates for telecommunications services "on the basis of retail rates charged to subscribers . . ., excluding . . . costs that will be avoided by the local exchange carrier."

These provisions, we thought, would make it crystal clear that the states set prices for local interconnection, unbundling, and resale where the parties need outside help. As the Conference Report explained with respect to wholesale rates, the rate "is to be determined by the State Commission." S. Rep. No. 230, 104th Cong., 2d Sess. 126 (1996).

Incredibly, the Commission read these provisions as crying out for federal regulation. It reasoned that regulations are needed to "equaliz[e] bargaining power" between incumbent local carriers and new entrants, and that "[n]ational (as opposed to state) rules more directly address these competitive circumstances." Order ¶ 55. The Commission simply refuses to accept Congress' judgment that state regulators -- who have decades of experience with local pricing issues -- are better positioned than the FCC to know what constitutes an unreasonable demand in particular local negotia-

tions. As long as a state commission complies with the statutory pricing constraints and abides by FCC regulations in those areas (such as number portability and unbundling) where the FCC was given specific authority, the state commission is free to arbitrate pricing disagreements as it sees fit.

II. THE FCC'S RULES WILL REDUCE COMPETITION, JOB CREATION, AND INVESTMENT

The FCC's rules would eliminate virtually all of the flexibility that Congress gave the state commissions. Worse than that, however, they would frustrate the development of genuinely competitive local telecommunications markets.

Congress carefully balanced the interests of incumbent local carriers and new entrants when it drew up the 1996 Act. The conference committee hammered out critical compromises that were designed to give all carriers, old and new, a fair chance to compete. Legislators believed that full and fair competition would "unleash such competitive forces and innovation that our Nation [would] see more technological development and deployment in the next 5 years than we have already seen this century," leading to "hundreds of thousands of new jobs and tens of billions of dollars being invested in infrastructure and technology." 142 Cong. Rec. H1174 (daily ed. Feb. 1, 1996) (statement of Rep. Buyer). Much of the anticipated growth was expected to come from the local exchange market.

The idea was simple. For several decades, competition in local markets has been artificially constrained by authorized monopolies. If those monopolies are eliminated, new businesses will enter the market. They will install their own wires and switches, and they will develop new products and services to attract customers. Today's incumbents will fight back by increasing their own investments in local facilities and services.

But a rational new entrant will not spend the money to install facilities if it has a guaranteed competitive advantage when it uses the incumbent's network. And the incumbent will not invest in upgrading its facilities when its competitors get the greatest benefit from that investment. Neither side would have an incentive to build or invest. Congress' whole plan for job creation and economic growth would be frustrated.

The Commission has arrogantly imposed, through the Order, its own view of what Congress should have done through the Act. The FCC's overreaching is well illustrated by the unbundling provisions of the FCC's rules, under which new entrants have a choice of buying retail services under one pricing formula, or buying all the network capacity needed to provide that same service under a totally different pricing formula. See Order ¶¶ 328-41. These provisions erase carefully drawn statutory distinctions between resale pricing, on one hand, and pricing of network elements, on the other.

Section 252(d) sets out distinct pricing formulas for network unbundling and resale of retail services. 47 U.S.C. § 252(d). As with jurisdiction over local pricing disputes, this distinction was hammered out in the House/Senate conference. The Senate bill contained no specific pricing guidelines relating to resale of incumbent carriers' retail services, but introduced the requirement that local exchange carriers make pieces of their networks separately available for competitors' use at prices "based on the cost . . . of providing the unbundled element" which "may include a reasonable profit." S. 652, § 101(a) (proposed § 251(d)(6)). Conversely, the House bill established only a broad "just, reasonable, and nondiscriminatory prices" standard for unbundling of local network facilities, H.R. 1555, § 101(a) (proposed § 242(a)(2)), but required that local carriers "offer services, elements, features, functions, and capabilities for resale at wholesale rates," id. (proposed § 242(a)(3)(A)).

The conferees realized that the specific pricing rules in the House and Senate bills addressed different situations. The House's formula for resale was designed principally for situations where a non-facilities-based carrier wants to sell the very same service that the incumbent provides its customers. H.R. Rep. No. 204, 104th Cong., 1st Sess. 72 (1995). Local regulators set some retail prices (usually prices for basic residential service) below cost, and make up for these losses by setting other retail prices (like prices for advanced business services) above cost. Id. If the Senate's "cost

plus profit" approach were used for sales to [illegible]e resellers of the incumbent's retail services, those resellers could earn large profits by targeting business customers whom the incumbent must charge above-market prices. This targeted approach, or "cream-skimming," would leave incumbents no way to recover the losses they must incur from serving subsidized customers.[10]

When the conference committee reconciled the two bills it clearly distinguished (as the Senate and House had not done) between (1) a competitor's right of "access to network elements on an unbundled basis" for the provision of its own facilities-based telecommunications services and (2) a competitor's right to purchase the incumbent's retail services at wholesale rates for the purpose of resale. 47 U.S.C. § 251(c)(3), (4). The conferees adopted pricing models that reflected that distinction. The Senate's "cost plus profit" formula was adopted for the purchase of unbundled elements, and the House's "retail price minus avoided costs" formula was adopted for the purchase of retail services to be made available to resellers. 47 U.S.C. § 252(d).

The FCC, however, has allowed competitors who have no local facilities of their own, and thus were expected to be governed by the House's wholesale pricing formula, to obtain all the network

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[10]In the Senate, Senators Inouye and Stevens offered an amendment that would have set wholesale prices at the incumbent carrier's "actual cost." 141 Cong. Rec. S8369 (daily ed. June 14, 1995). That amendment was withdrawn, 141 Cong. Rec. S8438 (daily ed. June 15, 1995), indicating the Senate's concurrence that cost-based pricing was not appropriate for resold services.

elements that go in to an incumbent's service under the Senate's "cost plus profit" formula. The Commission's rules have the perverse effect of allowing a competitor to chose the more favorable cost-based pricing method, effectively gutting the statutory distinction and guaranteeing that non-facilities-based carriers can make money by undercutting the incumbent's price for any offering that the incumbent must -- under state regulatory policies -- price above cost. As long as they can accumulate risk-free profits with minimal investment, competitors will not build their own networks to provide competing services.

The Commission's establishment of unbundling rules that act as a substitute, rather than an alternative, for purchasing retail services at wholesale rates slants competition in another way as well. Congress was aware that it would be unfair and anti-competitive to allow the major long distance carriers to market resold local service with their own long distance service where the local telephone company (which provides the local service) cannot sell long distance.[11] Section 271(e)(1) thus provides, in substance, that if AT&T, MCI, and Sprint want to sell packages of local and long distance services before the local exchange carrier

[11] See 142 Cong. Rec. S713-14 (daily ed. Feb. 1, 1996) (statement of Sen. Harkin) (joint marketing restriction designed "to prevent the big long distance companies from having a competitive advantage"); 142 Cong. Rec. S716-17 (daily ed. Feb. 1, 1996) (statement of Sen. Hollings) (preventing competitors from "cherry pick[ing]" profitable business customers while Bell Operating Companies are excluded from interLATA markets is contrary to public interest and interests of other local customers).

can do the same, they must build a local network of some sort. Under the FCC's approach, however, a company like AT&T can obtain all the unbundled network elements it needs to sell local service with its long distance service, without having a single foot of local telephone wire of its own. See Order ¶ 328.

This unfairness is compounded by the specific pricing rules developed by the Commission. As already explained, § 252(d)(1) of the Act instructs state arbitrators to set prices for interconnection and access to network elements based on the incumbent's "cost" plus "a reasonable profit." The Order, however, instructs state commissions to set prices based on a hypothetical "incremental cost" that would be incurred if the incumbent were using an ideally efficient network. 47 C.F.R. § 51.505(b)(1).

Congress meant what we all understand "cost" to mean, i.e., the amount actually paid for something. Furthermore, the Commission's approach of deriving prices from a hypothetical incremental cost would in many cases push prices even below the "actual cost" standard that Congress rejected as too low because it did not include a "reasonable profit." New competitors, who could obtain access to the incumbent's facilities below actual cost, would not build any of their own. And incumbents, lacking any incentive to incur additional construction costs that could not be recovered, would neglect their networks.

The FCC's Order likewise undermines the intent underlying § 252(d)(3), which governs resold local services and instructs the

states to fix wholesale prices at the retail rate less the costs that "will be avoided." Again, the decision to subtract only those costs that actually "will be avoided" was deliberate. Congress wanted to be sure that -- whether local regulators set the retail rate at, above, or below cost -- at least the incumbent will receive the same amount of profit or loss on the wholesale service as it would on the regulated retail service. The conferees thus rejected proposed language that would have set the statutory standard at retail rates minus "avoidable" costs, thereby altering the relationship between price and cost that state regulators built into the retail rate.

Yet the Commission set wholesale prices at the retail rate less any costs that the state determines "can be avoided." 47 C.F.R. § 51.609. It re-opened debate on the rejected "avoidable costs" proposal and then adopted it. See Order ¶¶ 884, 911. The Commission has eviscerated the Act's guarantee that incumbent carriers will receive enough from wholesale transactions so that they are no worse off than they would be under the retail rates, and can fulfill their obligation to provide subsidized services.

Finally, Congress specified that, when drafting rules regarding what network elements must be unbundled, the FCC should consider whether access to a particular proprietary element is "necessary." 47 U.S.C. § 251(d)(2). This provision was designed to reflect the "necessary" standard found in proposed § 251(b)(2) of the Senate bill. S. 652, § 101(a). Yet the Commission has run

around the plain language of the Act, by saying that access to an incumbent's proprietary network elements may be "necessary" even if the competitor can obtain the same elements elsewhere. Order ¶ 283. The Commission reasoned that applying the statute as written might raise competitors' costs somewhat, even if it did not actually prevent competition. Congress, however, wanted to encourage construction of competitive networks, not to set up a system whereby new entrants live indefinitely off of the incumbent's investment.

These examples all reflect the same problem. The Commission has adopted proposals Congress specifically rejected and that will slow the very "private sector deployment of advanced telecommunications and information technologies and services" that Congress meant to "accelerate." S. Rep. No. 230, at 1. We think the Commission is wrong about sound policy, as well as about the law. Its approach will reduce employment and economic growth. But if Congress did make policy mistakes, they are for Congress to fix. The Commission may not override our legislative judgments.

CONCLUSION

We have tried, through the congressional oversight process, speeches and letters, to encourage the Commission to respect the traditional jurisdictional division of authority that is embodied in the Communications Act. But the Commission is behaving like a renegade agency. It appears to believe that it isn't accountable

to anyone, and should be free to substitute its own judgments for congressional directives.

Apparently the Chairman of the Commission doesn't even believe that Commission decisions should be subject to judicial review. At a press conference in October, he likened this Court's Order Granting Stay Pending Judicial Review to the "imperial sovereignty" exercised by the Chinese emperors.[12]

But under our system, agencies aren't free to substitute their own judgments for those of the Congress. They must obey the law. This Court should strike down the local pricing provisions of the Order as beyond the FCC's jurisdiction and direct the Commission to respect carefully crafted statutory restrictions on resale of incumbents' services and unbundling of local networks.

Respectfully submitted,

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November 15, 1996

[12] Hundt Calls Court Stay of FCC Rules Example of Extreme Judicial Activism, BNA Analysis and Reports, at C-1 (Oct. 17, 1996).

MFS INTELENET, INC.

AND

U S WEST COMMUNICATIONS, INC.

ARBITRATED INTERCONNECTION AGREEMENT

FOR THE STATE OF WASHINGTON

TABLE OF CONTENTS

002560

TABLE OF CONTENTS

002561

TABLE OF CONTENTS

002562

TABLE OF CONTENTS

TABLE OF CONTENTS

TABLE OF CONTENTS

INTERCONNECTION AGREEMENT

THIS INTERCONNECTION AGREEMENT, made as of this _____ day of _____, 1996, is between MFS INTELENET, INC. ("MFS") and U S WEST Communications, Inc. ("USWC"), a Colorado corporation.

I. RECITALS

Pursuant to this Interconnection Agreement MFS INTELENET, INC. of Washington ("MFS") and U S WEST Communications, Inc. ("USWC"), collectively "the Parties", will extend certain arrangements to one another within each LATA in which they both operate within this State. This Agreement is a combination of agreed terms and terms imposed by arbitration under Section 252 of the Communications Act of 1934, as modified by the Telecommunications Act of 1996 ("the Act"), and as such does not necessarily represent the position of either Party on any given issue. The Parties enter into this Agreement without prejudice to any position they may have taken previously, or may take in the future in any legislative regulatory, or other public forum addressing any matters, including matters related to the types of arrangements prescribed by this Agreement.

II. SCOPE OF AGREEMENT

A. This Agreement sets forth the terms, conditions and prices under which USWC agrees to provide (a) services for resale (hereinafter referred to as "Local Services") (b) certain Unbundled Network Elements, Ancillary Functions and additional features to MFS (hereinafter collectively referred to as "Network Elements") or combinations of such Network Elements ("Combinations") for MFS's own use or for resale to others. The Agreement also sets forth the terms, conditions and prices under which the parties agree to provide interconnection and reciprocal compensation for the exchange of local traffic between USWC and MFS for purposes of offering telecommunications services. Unless otherwise provided in this Agreement, the parties will perform all of their obligations hereunder throughout, to the extent provided in the Appendices attached hereto. The Agreement includes all accompanying appendices.

B. In the performance of their obligations under this Agreement, the Parties shall act in good faith and consistently with the intent of the Act. Where notice, approval or similar action by a Party is permitted or required by any provision of this Agreement, (including, without limitation, the obligation of the parties to further negotiate the resolution of new or open issues under this Agreement) such action shall not be unreasonably delayed, withheld or conditioned.

C. When MFS begins offering residential and business exchange services in this state through the use of MFS's facilities, MFS will notify USWC.

D. Acknowledgment of Deferred Issues:

MFS acknowledges it is USWC's position that USWC's existing telecommunications network represents substantial investment made as a result of its carrier-of-last-resort obligation and that such network allows MFS's end users to interconnect with significantly more business and residential customers than vice versa. MFS further acknowledges USWC believes that a separate transitional element is necessary to compensate USWC for the value of its network in this Agreement, that under the Act, the FCC will establish a proceeding to address Universal Service Support, and that the Act also empowers the state Commission to establish a separate proceeding on universal service issues. MFS further acknowledges that USWC believes that USWC is entitled to receive additional compensation for costs of implementing various provisions of the Act, and that USWC shall seek such additional recovery through future state and/or federal regulatory proceedings. MFS disagrees with these USWC positions.

USWC acknowledges it is MFS's position that the relative investments of the Parties is not a relevant consideration in the context of this agreement and that it is the result of a historical monopoly which confers significant, continuing benefits on USWC. USWC acknowledges that it is MFS's position that no transitional elements are necessary to compensate USWC, that any such transitional elements would constitute a windfall to USWC, and that the investigations contemplated at the State and federal level for Universal Service Funding will substantially disprove USWC's claims. USWC further acknowledges that MFS believes that the costs of implementing the Act are costs experienced by all telecommunications carriers and that it would be unjust, discriminatory, and anti-competitive to favor USWC with additional cost recovery of implementation costs. USWC disagrees with these MFS positions.

In consideration of MFS's willingness to interconnect on the terms set forth in this Agreement, and without prejudice to the position it may take in the FCC docket or before any state Commission, USWC agrees to await the outcome of such proceedings, rather than seek universal service support from MFS at this time.

III. DEFINITIONS

A. "Act" means the Communications Act of 1934 (47 U.S.C. 151 et.seq.), as amended by the Telecommunications Act of 1996, and as from time to time interpreted in the duly authorized rules and regulations of the FCC or a Commission within its state of jurisdiction.

B. "Access Services" refers to the tariffed interstate and intrastate switched access and private line transport services offered for the origination and/or termination of interexchange traffic (see each Parties' appropriate state and interstate access tariffs).

C. "ADSL" or "Asymmetrical Digital Subscriber Line" means a transmission technology which transmits an asymmetrical digital signal using one of several transmission methods (for example, carrier-less AM/PM discrete multi-tone, or discrete wavelet multi-tone).

D. "Access Service Request" or "ASR" means the industry standard forms and supporting documentation used for ordering Access Services. The ASR will be used to order trunking and facilities between MFS and USWC for Local Interconnection Service.

E. "Automatic Number Identification" or "ANI" means a Feature Group D signaling parameter which refers to the number transmitted through a network identifying the billing number of the calling party.

F. "CLASS features" are optional end user switched services that include, but are not necessarily limited to: Automatic Call Back; Call Trace; Caller ID and Related Blocking Features; Distinctive Ringing/Call Waiting; Selective Call Forward; Selective Call Rejection. (See Bellcore documentation for definition).

G. "BLV/BLVI Traffic" means an operator service call in which the caller inquires as to the busy status of or requests an interruption of a call on another Customer's Telephone Exchange Service line.

H. "Central Office Switch" means a switch used to provide Telecommunications Services, including, but not limited to:

   a. "End Office Switches" which are used to terminate Customer station loops for the purpose of interconnecting to each other and to trunks; and

   b. "Tandem Office Switches" which are used to connect and switch trunk circuits between and among other Central Office Switches. Access tandems provide connections for exchange access and toll traffic while local tandems provide connections for local/EAS traffic.

I. "Collocation" means an arrangement whereby one Party's (the "Collocating Party") facilities are terminated in its equipment necessary for Interconnection or for access to Network Elements on an unbundled basis which has been installed and maintained at the premises of a second Party (the "Housing Party"). Collocation may be "physical" or "virtual". In "Physical Collocation," the Collocating Party installs and maintains its own equipment in the Housing Party's premises. In "Virtual Collocation," the Housing Party installs and maintains the Collocating Party's equipment in the Housing Party's premises.

J. "Commission" means the Washington Utilities and Transportation Commission.

K. "Customer" means a third-party (residence or business) that subscribes to Telecommunications Services provided by either of the Parties.

L. "Calling Party Number" or "CPN" is a Common Channel Signaling ("CCS") parameter which refers to the number transmitted through a network identifying the calling party.

M. "Common Channel Signaling" or "CCS" means a method of digitally transmitting call set-up and network control data over a special signaling network fully separate from the public voice switched network elements that carry the actual call. The CCS used by the Parties shall be Signaling System 7.

N. "Competitive Local Exchange Carrier" means an entity authorized to provide Local Exchange Service that does not otherwise qualify as an incumbent LEC.

O. "Digital Signal Level" means one of several transmission rates in the time division multiplexing hierarchy.

P. "Digital Signal Level 0" or "DS0" means the 64 Kbps zero-level signal in the time-division multiplex hierarchy.

Q. "Digital Signal Level 1" or "DS1" means the 1.544 Mbps first-level signal in the time-division multiplex hierarchy. In the time-division multiplexing hierarchy of the telephone network, DS1 is the initial level of multiplexing.

R. "Digital Signal Level 3" or "DS3" means the 44.736 Mbps third-level in the time-division multiplex hierarchy. In the time-division multiplexing hierarchy of the telephone network, DS3 is defined as the third level of multiplexing.

S. "Exchange Message Record" or "EMR" is the standard used for exchange of telecommunications message information between telecommunications providers for billable, non-billable, sample, settlement and study data. EMR format is contained in BR-010-200-010 CRIS Exchange Message Record, a Bellcore document that defines industry standards for exchange message records.

T. "Fiber-Meet" means an interconnection architecture method whereby the Parties physically interconnect their networks via an optical fiber interface (as opposed to an electrical interface) at a mutually agreed upon location.

U. "HDSL" or "High-Bit Rate Digital Subscriber Line" means a two-wire or four-wire transmission technology which typically transmits a DS1-level signal (or, higher level signals with certain technologies), using: 2 Binary / 1 Quartenary ("2B1Q").

V. "Integrated Digital Loop Carrier" means a subscriber loop carrier system which integrates within the switch at a DS1 level that is twenty-four (24) local Loop transmission paths combined into a 1.544 Mbps digital signal.

W. "Interconnection" is as described in the Act and refers to the connection of separate pieces of equipment, facilities, or platforms between or within networks for the purpose of transmission and routing of Telephone Exchange Service traffic and Exchange Access traffic.

X. "Interexchange Carrier" or "IXC" means a carrier that provides, directly or indirectly, interLATA or intraLATA Telephone Toll Services.

Y. "Integrated Services Digital Network" or "ISDN" means a switched network service that provides end-to-end digital connectivity for the simultaneous transmission of voice and data. Basic Rate Interface-ISDN (BRI-ISDN) provides for a digital transmission of two 64 Kbps bearer channels and one 16 Kbps data channel (2B+D).

Z. "Local Loop Transmission" or "Loop" means the entire transmission path which extends from the network interface or demarcation point at a Customer's premises to the Main Distribution Frame or other designated frame or panel in a Party's Wire Center which serves the Customer.

AA. "Main Distribution Frame" or "MDF" means the distribution frame of the Party providing the Loop used to interconnect cable pairs and line and trunk equipment terminals on a switching system.

BB. "Meet-Point Billing" or "MPB" refers to an agreement whereby two LECs (including a LEC and CLEC) jointly provide switched access service to an Interexchange Carrier, with each LEC (or CLEC) receiving an appropriate share of the transport element revenues as defined by their effective access tariffs.

CC. "MECAB" refers to the Multiple Exchange Carrier Access Billing (MECAB) document prepared by the Billing Committee of the Ordering and Billing Forum (OBF), that functions under the auspices of the Carrier Liaison Committee (CLC) of the Alliance for Telecommunications Industry Solutions (ATIS). The MECAB document, published by Bellcore as Special Report SR-BDS-000983, contains the recommended guidelines for the billing of an access service provided by two or more LECs (including a LEC and a CLEC), or by one LEC in two or more states within a single LATA.

DD. "MECOD" refers to the Multiple Exchange Carriers Ordering and Design (MECOD) Guidelines for Access Services - Industry Support Interface, a document developed by the Ordering/Provisioning Committee under the auspices of the Ordering and Billing Forum (OBF), that functions under the auspices of the Carrier Liaison Committee (CLC) of the Alliance for Telecommunications Industry Solutions (ATIS). The MECOD document, published by Bellcore as Special Report SR STS-002643, establishes recommended guidelines for processing orders for access service that is to be provided by two or more LECs (including a LEC and a CLEC). It is published by Bellcore as SRBDS 00983.

EE. "Mid-Span Meet" is a point of interconnection between two networks, designated by two telecommunications carriers, at which one carrier's responsibility for service begins and the other carrier's responsibility ends.

FF. "North American Numbering Plan" or "NANP" means the numbering plan used in the United States that also serves Canada, Bermuda, Puerto Rico and certain Caribbean Islands. The NANP format is a 10-digit number that consists of a 3-digit NPA code (commonly referred to as the area code), followed by a 3-digit NXX code and 4-digit line number.

GG. "NXX" means the fourth, fifth and sixth digits of a ten-digit telephone number.

HH. "Point of Interface" or "POI" is a mutually agreed upon point of demarcation where the exchange of traffic between two LECs (including a LEC and a CLEC) takes place.

II. "Party" means either USWC or MFS and "Parties" means USWC and MFS.

JJ. "Port" means a termination on a Central Office Switch that permits customers to send or receive telecommunications services over the public switched network, but does not include switch features or switching functionality.

KK. "Rate Center" means the specific geographic point and corresponding geographic area which are associated with one or more particular NPA-NXX codes which have been assigned to a LEC (or CLEC) for its provision of basic exchange telecommunications services. The "rate center point" is the finite geographic point identified by a specific V & H coordinate, which is used to measure distance-sensitive end user traffic to/from, the particular NPA-NXX designations associated with the specific Rate Center. The "rate center area" is the exclusive geographic area identified as the area within which the LEC (or CLEC) will provide Basic Exchange Telecommunications Service bearing the particular NPA-NXX designations associated with the specific Rate Center. The Rate Center point must be located within the Rate Center area.

LL. "Reseller" is a category of Local Exchange service provider that obtains dial tone and associated telecommunications services from another provider through the purchase of bundled finished services for resale to its end use customers.

MM. Service Control Point" or "SCP" means a signaling end point that acts as a database to provide information to another signaling end point (i.e., Service Switching Point or another SCP) for processing or routing certain types of network calls. A query/response mechanism is typically used in communicating with an SCP.

NN. "Signaling Transfer Point" or "STP" means a signaling point that performs message routing functions and provides information for the routing of messages between signaling end points. An STP transmits, receives and processes Common Channel Signaling ("CCS") messages.

OO. "Switched Exchange Access Service" means the offering of transmission or switching services to Telecommunications Carriers for the purpose of the origination or termination of Telephone Toll Service. Switched Exchange Access Services include: Feature Group A, Feature Group B, Feature Group D, 800/888

access, and 900 access and their successors or similar Switched Exchange Access services.

PP "Traffic Type" is the characterization of intraLATA traffic as "local" (local includes EAS), or "toll" which shall be the same as the characterization established by the effective tariffs of the incumbent local exchange carrier as of the date of this agreement.

QQ. "Wire Center" denotes a building or space within a building, that serves as an aggregation point on a given carrier's network, where transmission facilities are connected or switched. Wire Center can also denote a building where one or more Central Offices, used for the provision of Basic Exchange Telecommunications Services and Access Services, are located. However, for purposes of Collocation Service, Wire Center shall mean those points eligible for such connections as specified in the FCC Docket No. 91-141, and rules adopted pursuant thereto.

RR. "Routing Point" means a location that a LEC or CLEC has designated on its own network as the homing (routing) point for traffic, bearing a certain NPA-NXX designation, that is inbound to Basic Exchange Telecommunications Services provided by the LEC or CLEC. The Routing Point is employed to calculate mileage measurements for the distance-sensitive transport element charges of Switched Access Services. Pursuant to Bellcore Practice BR 795-100-100, the Routing Point may be an "End Office" location, or a "LEC Consortium Point of Interconnection". Pursuant to that same Bellcore Practice, examples of the latter shall be designated by a common language location identifier (CLLI) code with (x)KD in positions 9, 10, 11, where (x) may be any alphanumeric A-Z or 0-9. The above referenced Bellcore document refers to the Routing Point as the Rating Point. The Rating Point/Routing Point need not be the same as the rate center point nor must it be located within the rate center area, but must be in the same LATA as the NPA/NXX.[1]

SS. "Tariff Services" as used throughout this Agreement refers to the applicable Party's interstate tariffs and state tariffs, price lists, price schedules and catalogs.

TT. "Information Service Traffic" means Local Traffic or IntraLATA Toll Traffic which originates on a Telephone Exchange Service line and which is addressed to an information service provided over a Party's information services platform (e.g., 976).

UU. Terms not otherwise defined here, but defined in the Act or in regulations implementing the Act, shall have the meaning defined there.

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[1] This sentence is incorporated pursuant to the Arbitrator's decision in Docket No. UT-960323.

IV. RATES AND CHARGES GENERALLY

A. Prices for termination and transport of traffic, interconnection, access to unbundled network elements, and ancillary services are set forth in Appendix A.

B. USWC's wholesale discounts for resale services are set forth in Appendix A.

C. The underlying provider of a resold service shall be entitled to receive, from the purchaser of switched access, the appropriate access charges pursuant to its then effective switched access tariff. For the purposes of this paragraph, Unbundled Loops are not considered as resold services.

V. RECIPROCAL TRAFFIC EXCHANGE

A. Scope

Reciprocal traffic exchange addresses the exchange of traffic between MFS end users and USWC end users. If such traffic is local, the provisions of this Agreement shall apply. Where either party acts as an intraLATA toll provider or interLATA Interexchange Carrier (IXC) or where either party interconnects and delivers traffic to the other from third parties, each party shall bill such third parties the appropriate charges pursuant to its respective tariffs or contractual offerings for such third party terminations. Absent a separately negotiated agreement to the contrary, the Parties will directly exchange traffic between their respective networks, without the use of third party transit providers.

B. Types of Traffic

The types of traffic to be exchanged under this Agreement include:

1. EAS/local traffic as defined above.

2. IntraLATA toll traffic as defined above.

3. Switched access traffic, or interLATA toll traffic, as specifically defined in USWC's state and interstate switched access tariffs, and generally identified as that traffic that originates at one of the Party's end users and terminates at an IXC point of presence, or originates at an IXC point of presence and terminates at one of the Party's end users, whether or not the traffic transits the other Party's network.

4. Transit traffic is any traffic other than switched access, that originates from one Telecommunications Carrier's network, transits another Telecommunications Carrier's network, and terminates to yet another Telecommunications Carrier's network.

   Transit service provides the ability for a Telecommunications Carrier to use its connection to a local or access tandem for delivery of calls that originate with a Telecommunications Carrier and terminate to a company other than the tandem company, such as another Competitive Local Exchange Carrier, an existing Exchange Carrier, or a wireless carrier. In these cases, neither the originating nor terminating end user is a customer of the tandem Telecommunications Carrier. The tandem Telecommunications Carrier will accept traffic originated by a Party and will terminate it at a point of interconnection with another local, intraLATA or interLATA network Telecommunications Carrier. This service is provided through local and access tandem switches.

5. Ancillary traffic includes all traffic destined for ancillary services, or that may have special billing requirements, including, but not limited to the following:

a. Directory Assistance
b. 911/E911
c. Operator call termination (busy line interrupt and verify)
d. 800/888 database dip
e. LIDB
f. Information services requiring special billing.

6. Unless otherwise stated in this Agreement, ancillary traffic will be exchanged in accordance with whether the traffic is Local/EAS, intraLATA toll, or Switched Access.

C. Types of Exchanged Traffic

1. Termination of Local Traffic.

Local traffic will be terminated as Local Interconnection Service (LIS).

2. Transport of Local Traffic

As negotiated between the Parties, the exchange of local traffic between the Parties may occur in several ways:

a. While the parties anticipate the use of two way trunks for the delivery of local traffic, either Party may elect to provision its own one-way trunks for delivery of local traffic to be terminated on the other Party's network at the "initial" point of interconnection.

b. The Parties may elect to purchase transport services from each other or from a third party. Such transport delivers the originating Party's local traffic to the terminating Party's end office or tandem for call termination. Transport may be purchased as either tandem switched transport (which is included in the tandem call termination rate) or direct trunk transport.

c. Based on forecasted traffic at MFS's busy hour in CCS, where there is a DS1's worth of traffic (512 CCS) between the MFS switch and a USWC end office, the Parties agree to provision a dedicated (i.e., direct) two-way trunk group from the MFS switch directly to the USWC end office. To the extent that MFS has established a collocation arrangement at a USWC end office location, and has available capacity, the Parties agree that MFS shall provide two-way direct trunk facilities, when required, from that end office to the MFS switch. In all other cases, the direct facility may be provisioned by USWC or MFS or a third party. If both MFS and USWC desire to provision the facility and cannot otherwise agree, the parties may agree to resolve the dispute through the submission of competitive bids.

3. Transit Traffic.

a. USWC will accept traffic originated by MFS and will terminate it at a point of interconnection with another CLEC, Exchange Carrier, Interexchange Carrier or Wireless Carrier. USWC will provide this transit service through local and access tandem switches. MFS may also provide USWC with transit service.

b. The Parties expect that all networks involved in transporting transit traffic will deliver calls to each involved network with CCS/SS7 protocol and the appropriate ISUP/TCAP message to facilitate full interoperability and billing functions. In all cases, the originating company is responsible to follow the EMR standard and to exchange records with both the transiting company and the terminating company, to facilitate the billing process to the originating network.

c. The Parties will use industry standards developed to handle the provision and billing of Switched Access by multiple providers (MECAB, MECOD and the Parties' FCC tariffs), including the one-time provision of notification to MFS of the billing name, billing address and carrier identification codes of all interexchange carriers originating or terminating at each USWC access tandem.

4. Toll Traffic.

Toll traffic routed to an access tandem, or directly routed to an end office, will be terminated as Switched Access Service. Traffic terminated at the access tandem will be routed to the end offices within the LATA that subtend the USWC access tandem switch. Switched Access Service also allows for termination at an end office or tandem via direct trunked circuits provisioned either by USWC or MFS.

D. Rate Structure -- Local Traffic

1. Call Termination

a. The Parties agree that call termination rates as described in Appendix A will apply reciprocally for the termination of local/EAS traffic per minute of use.

b. For traffic terminated at an USWC or MFS end office, the end office call termination rate in Appendix A shall apply.

c. For traffic terminated at a USWC or MFS tandem switch, the tandem call termination rate in Appendix A shall apply. The tandem call termination rate provides for end office call termination, tandem switched transport and tandem switching.

The Parties acknowledge that MFS will initially serve all of its customers within a given LATA through a single MFS switch. The Parties also acknowledge that MFS may, in the future, deploy additional switches in each LATA.[2]

d. For purposes of call termination, the initial MFS switch shall be treated as a tandem switch.[3]

e. Pursuant to the Arbitrator's decision in Docket No. UT-960323, USWC's proposed paragraph has been deleted.

2. Transport

a. If the Parties elect to each provision their own one-way trunks to the other Party's end office for the termination of local traffic, each Party will be responsible for its own expenses associated with the trunks and no transport charges will apply. Call termination charges shall apply as described above.

b. If one Party desires to purchase direct trunk transport from the other Party, the following rate elements will apply. Transport rate elements include the direct trunk transport facilities between the POI and the terminating party's tandem or end office switches.. The applicable rates are described in Appendix A.

c. Direct-trunked transport facilities are provided as dedicated DS3 or DS1 facilities without the tandem switching functions, for the use of either Party between the point of interconnection and the terminating end office or tandem switch.

d. If the Parties elect to establish two-way direct trunks, the compensation for such jointly used 'shared' facilities shall be adjusted as follows. The nominal compensation shall be pursuant to the rates for direct trunk transport in Appendix A. The actual rate paid to the provider of the direct trunk facility shall be reduced to reflect the provider's use of that facility. The adjustment in the direct trunk transport rate shall be a percentage that reflects the provider's relative use (i.e., originating minutes of use) of the facility in the busy hour.

e. Multiplexing options are available at rates described in Appendix A.

E. Rate Structure -- Toll Traffic.

[2] This sentence is included pursuant to the Arbitrator's decision in Docket No. UT-960323.

[3] This sentence is included pursuant to the Arbitrator's decision in Docket No. UT-960323.

Applicable Switched Access Tariff rates, terms, and conditions apply to toll traffic routed to an access tandem, or directly to an end office. Relevant rate elements include Direct Trunk Transport (DTT) or Tandem Switched Transport (TST), Interconnection Charge (IC), Local Switching, and Carrier Common Line, as appropriate.

F. Rate Structure -- Transit Traffic.

Applicable switched access, Type 2 or LIS transport rates apply for the use of USWC's network to transport transit traffic. For transiting local traffic, the applicable local transit rate applies to the originating party per Appendix A. For transiting toll traffic, the Parties will charge the applicable switched access rates to the responsible carrier. For terminating transiting wireless traffic, the Parties will charge their applicable rates to the wireless provider. For transiting wireless traffic, the parties will charge each other the applicable local transit rate.

G. LIS Interface Code Availability And Optional Features

1. Interface Code Availability.

   Supervisory Signaling specifications, and the applicable network channel interface codes for LIS trunks, are the same as those used for Feature Group D Switched Access Service, as described in the Parties' applicable switched access tariffs.

2. Optional Features.

   a. Inband MF or SS7 Out of Band Signaling.

      Inband MF signaling and SS7 Out of Band Signaling are available for LIS trunks. MF signaling or SS7 Out-of-Band Signaling must be requested on the order for the new LIS trunks. Provisioning of the LIS trunks equipped with MF signaling or SS7 Out of Band Signaling is the same as that used for Feature Group D Switched Access. Common Channel Signaling Access Capability Service, as set forth in Section XXVIII herein, must be ordered by MFS when SS7 Out-of-Band Signaling is requested on LIS trunks.

   b. Clear Channel Capability.

      Clear Channel Capability permits 24 DS0-64 kbit/s services or 1.536 Mbit/s of information on the 1.544 Mbit/s line rate. Clear Channel Capability is available for LIS trunks equipped with SS7 Out-of-Band Signaling. Clear Channel Capability is only available on trunks to USWC's access tandem switch or USWC's end office switches (where available); (Clear Channel Capability is not available on trunks to USWC's local tandem switches or end offices where it is currently not deployed. MFS agrees to use the

Network Interconnection and Unbundled Element Request process to request clear channel capability for such additional switches. Prices for such additional clear channel capability, if any, will be established through the NIUER Process). Clear Channel Capability must be requested on the order for the new LIS trunks. The provisioning of the LIS trunks equipped with Clear Channel Capability is the same as that used for Feature Group D Switched Access Service. USWC will provide MFS with a listing of USWC end offices, local tandems and access tandems equipped with clear channel capability.

H. Measuring Local Interconnection Minutes

1. Measurement of terminating Local Interconnection Minutes begins when the terminating LIS entry switch receives answer supervision from the called end user's end office indicating the called end user has answered. The measurement of terminating call usage over LIS trunks ends when the terminating LIS entry switch receives disconnect supervision from either the called end user's end office, indicating the called end user has disconnected, or MFS's point of interconnection, whichever is recognized first by the entry switch.

2. USWC and MFS are required to provide each other the proper call information (e.g., originated call party number and destination call party number, etc.) to enable each Party to issue bills in a complete and timely fashion.

I. Testing

1. Acceptance Testing

   At the time of installation of an LIS trunk group, and at no additional charge, the Parties will cooperatively test the same parameters tested for terminating Feature Group D Switched Access Service. Please see USWC's applicable switched access tariff for the specifications.

2. Testing Capabilities

   a. Terminating LIS testing is provided where equipment is available, with the following test lines: seven-digit access to balance (100 type), milliwatt (102 type), nonsynchronous or synchronous, automatic transmission measuring (105 type), data transmission (107 type), loop-around, short circuit, open circuit, and non-inverting digital loopback (108 type).

   b. In addition to LIS acceptance testing, other tests are available (e.g., additional cooperative acceptance testing, automatic scheduled testing, cooperative scheduled testing, manual

scheduled testing, and non-scheduled testing) at the applicable tariff rates.

J. Ordering

1. When ordering LIS, the ordering Party shall specify on the service order: 1) the type and number of interconnection facilities to terminate at the point of interconnection in the serving wire center; 2) the type of interoffice transport, (i.e., direct trunk transport or tandem switched transport); 3) the peak busy hour CCS from the MFS end office; 4) the number of trunks to be provisioned at a local exchange office or tandem; 5) and any optional features (see form Appendix B). When the ordering Party requests facilities, routing, or optional features different than those determined to be available, the Parties will work cooperatively in determining an acceptable configuration, based on available facilities, equipment and routing plans

2. When the ordering Party initially orders a DS3 interconnection facility, in conjunction with tandem switched transport to a tandem, or DS3 direct trunk transport facilities to a tandem or local exchange office, the provider will forward the appropriate DS1 facility record information necessary to identify the circuit facility assignment (CFA). On subsequent orders utilizing existing DS3 interconnection facilities, or DS3 direct trunk transport facilities, the provider will assign the DS1 facility to the DS 3 interconnection facility or DS3 direct trunk transport facility, as directed by the ordering Party.

3. A joint planning meeting will precede MFS and USWC trunking orders. These meetings will result in the transmittal of Access Service Requests (ASRs) to initiate order activity. A Party requesting tandem interconnection will provide its best estimate of the traffic distribution to each end office subtending the tandem.

4. Service intervals and due dates for negotiated arrangements will be determined on an individual case basis.

K. Billing Arrangements

1. USWC and MFS desire to submit separate bills, pursuant to their separate tariffs, to interexchange carriers for their respective portions of jointly provided switched access service.

   Based on the negotiated POI, the Parties will agree on a meet point percentage to enable the joint provisioning and billing of Switched Access Services to third parties in conformance with the Meet-Point Billing guidelines adopted by and contained in the Ordering and Billing Forum's MECAB and MECOD documents and referenced in USWC's Switched Access Tariffs. The Parties understand and agree that MPB arrangements are available and functional only to/from Interexchange

Carriers who directly connect with the tandem(s) that MFS sub-tends in each LATA..

2. The parties will use reasonable efforts, individually and collectively, to maintain provisions in their respective federal and state access tariffs, and/or provisions within the National Exchange Carrier Association ("NECA") Tariff No. 4, or any successor tariff, sufficient to reflect this MPB arrangement, including MPB percentages.

3. As detailed in the MECAB document, MFS and USWC will exchange all information necessary to bill third parties for Switched Access Services traffic jointly handled by MFS and USWC via the meet point arrangement in a timely fashion. Information shall be exchanged in Exchange Message Record ("EMR") format (Bellcore Standard BR 010-200-010, as amended) on magnetic tape or via a mutually acceptable electronic file transfer protocol. The Parties will exchange records pursuant to this paragraph without additional compensation.

4. The Parties will agree upon reasonable audit standards and other procedures as required to ensure billing accuracy.

5. Each company will bill the IXC's the appropriate rate elements in accordance with their respective interstate and intrastate tariffs, as follows:

Rate Element	Billing Company
Carrier Common Line	Dial Tone Provider
Local Switching	Dial Tone Provider
Interconnection Charge	Dial Tone Provider
Local Transport Termination	Based on negotiated BIP
Local Transport Facility (also called Tandem Transmission per mile)	Based on negotiated BIP
Tandem Switching	Access Tandem Provider
Entrance Facility	Access Tandem Provider

6. For originating 800/888 traffic routed to an access tandem, the tandem provider will perform 800/888 database inquiry and translation functions and bill the inquiry charge and translation charge (if any) to the interexchange carrier pursuant to tariff.

7. Pursuant to the Arbitrator's decision in Docket No. UT-960323, this MFS proposed paragraph has been deleted.

L. Mileage Measurement

Where required, the mileage measurement for LIS facilities and trunks is determined in the same manner as the mileage measurement for Feature Group D Switched Access Service.

M. Construction Charges

For issues related to construction charges, see Section XXIX of this Agreement.

VI. INTERCONNECTION

A. Definition

1. Interconnection" is the linking of the USWC and MFS networks for the mutual exchange of traffic and for MFS access to unbundled network elements. Interconnection does not include the transport and termination of traffic. Interconnection is provided by virtual or physical collocation, entrance facilities or meet point arrangements.

2. USWC will provide interconnection at the line side of the local switch, the trunk side of the local switch, trunk interconnection points of the tandem switch, central office cross-connect points, and signaling transfer points necessary to exchange traffic and access call related databases.

B. Mid-span Meet POI

1. A Mid-Span Meet POI is a negotiated point of interface, limited to the interconnection of facilities between one Party's switch and the other Party's switch. The actual physical point of interface and facilities used will be subject to negotiations between the Parties. Each Party will be responsible for its portion of the build to the Mid-Span Meet POI, if the meet point arrangement is used exclusively for the exchange of local traffic.

2. If the Mid-Span Meet arrangement is to be used for access to unbundled network elements, MFS must pay the portion of the economic costs of the Mid-Span Meet arrangement used by MFS for access to unbundled network elements.

C. Collocation

Interconnection may be accomplished through either virtual or physical collocation. The terms and conditions under which collocation will be available are described in Section VII herein.

D. Entrance Facility

Interconnection may be accomplished through the provision of an entrance facility. An entrance facility extends from the serving wire center of the provider to the other party's switch location. Entrance facilities may not extend beyond the area described by the provider's serving wire center. The rates for entrance facilities are provided in Appendix A.

E. Quality of Interconnection USWC will not, for the purpose of interconnection, provide to MFS less favorable terms and conditions than USWC provides itself or in a manner less efficient than it would impose on itself. The quality of interconnection will be at least equal to that of USWC . To the extent that MFS requests higher or lower quality interconnection, MFS agrees to use the New

Interconnection/Unbundled Element Request procedure described in Section XXIII.

Both Parties agree to manage their network switches in accordance with the Bellcore LSSGR. The acceptable service levels for LIS and the criteria for applying protective controls will be administered in the same manner as the network management for Switched Access Service.

F. Points of Interface (POI)

Upon the request for specific point to point routing, USWC will make available to MFS information indicating the location and technical characteristics of USWC's network facilities. The following alternatives are negotiable: (1) a DS1 or DS3 entrance facility, where facilities are available (where facilities are not available and USWC is required to build, see Section XXIX for issues relating to construction charges) (2) Virtual Collocation; (3) Physical Collocation; and (4) negotiated Mid-Span Meet facilities. Each Party is responsible for providing its own facilities up to the Mid-Span Meet POI. The Parties will negotiate the facilities arrangement between their networks.

G. Trunking Requirements

1. USWC agrees to provide designed interconnection facilities that meet the same technical criteria and service standards, such as probability of blocking in peak hours and transmission standards, in accordance with industry standards.

2. Two-way trunk groups will be established wherever possible. Exceptions to this provision will be based on billing, signaling, and network requirements. For example, (1) billing requirements - switched access vs. local traffic, (2) signaling requirements - MF vs. SS7, and (3) network requirements - directory assistance traffic to TOPS tandems. The following is the current list of traffic types that require separate trunk groups, unless specifically otherwise agreed to by the Parties. The following list does not include separate trunks for transit traffic to third parties. The Parties agree that if recording and reporting procedures cannot be implemented to appropriately measure local and toll transit traffic, either Party may request separate transit trunks. In such a case, the other Party will not unreasonably withhold its consent to establish separate trunks.[4]

    a. IntraLATA toll and switched access trunks
    b. EAS/local trunks
    c. Directory Assistance trunks
    d. 911/E911 trunks

[4] The Parties have amended this provision in lieu of the disputed separate trunk groups for local and toll transit traffic (formerly g. and h. below).

e. Operator services trunks
f. Commercial Mobile Radio Service/Wireless traffic for which MFS serves as the transit provider between the CMRS provider and USWC.
g. (deleted)
h. (deleted)
i. Meet Point Billing Trunks (for the joint provision of switched access).

3. Trunk group connections will be made at a DS1 or multiple DS1 level for exchange of EAS/local, intraLATA toll, wireless/Commercial Mobile Radio Service, and switched access traffic. Ancillary service trunk groups will be made below a DS1 level, as negotiated.

4. The Parties will provide Common Channel Signaling (CCS) to one another, where available, in conjunction with all Local/EAS Trunk Circuits. All CCS signaling parameters will be provided including calling party number (CPN), originating line information (OLI) calling party category, charge number, etc. All privacy indicators will be honored.

5. Where CCS is not available, in-band multi-frequency (MF) wink start signaling will be provided. When the Parties interconnect via CCS for jointly provided switched access service, the tandem provider will provide MF/CCS interworking as required for interconnection with interexchange carriers who use MF signalling.

6. The Parties will follow all Ordering and Billing Forum adopted standards pertaining to CIC/OZZ codes.

7. USWC will cooperate in the provision of TNS (Transit Network Selection) for the joint provision of switched access.

8. The Parties shall terminate local/EAS traffic exclusively on local/EAS trunk groups. No local/EAS trunk groups shall be terminated on USWC's access tandems.

H. Service Interruptions.

1. Standards and procedures for notification of trunk disconnects will be jointly developed by the Parties. Neither Party shall be expected to maintain active status for a trunk disconnected by the other Party for an extended or indefinite period of time. Collectively, the Parties will use their best good faith efforts to complete and agree on such plan.

2. The characteristics and methods of operation of any circuits, facilities or equipment of either Party connected with the services, facilities or equipment of the other Party pursuant to this Agreement shall not: 1) interfere with or impair service over any facilities of the other Party; its affiliated companies, or its connecting and concurring carriers involved in

its services; 2) cause damage to their plant; 3) violate any applicable law or regulation regarding the invasion of privacy of any communications carried over the Party's facilities; or 4) create hazards to the employees of either Party or to the public. Each of these requirements is hereinafter referred to as an "Impairment of Service".

3. If either Party causes an Impairment of Service, as set forth in this Section, the Party whose network or service is being impaired (the "Impaired Party") shall promptly notify the Party causing the Impairment of Service (the "Impairing Party") of the nature and location of the problem. They shall advise the Impairing Party that, unless promptly rectified, a temporary discontinuance of the use of any circuit, facility or equipment may be required. The Impairing Party and the Impaired Party agree to work together to attempt to promptly resolve the Impairment of Service. If the Impairing Party is unable to promptly remedy the Impairment of Service, the Impaired Party may temporarily discontinue use of the affected circuit, facility or equipment.

4. Each Party shall be solely responsible, and bear the expense, for the overall design of its services. Each Party shall also be responsible for any redesign or rearrangement of its services that may be required because of changes in facilities, operations or procedures, minimum network protection criteria, and operating or maintenance characteristics of the facilities.

5. To facilitate trouble reporting and to coordinate the repair of the service provided by each Party to the other under this Agreement, each Party shall designate a Trouble Reporting Control Office (TRCO) for such service.

6. Where new facilities, services and arrangements are installed, the TRCO shall ensure that continuity exists and take appropriate transmission measurements before advising the other Party that the new circuit is ready for service.

7. Each Party shall furnish a trouble reporting telephone number for the designated TRCO. This number shall give access to the location where facility records are normally located and where current status reports on any trouble reports are readily available. Alternative out-of-hours procedures shall be established to ensure access to a location that is staffed and has the authority to initiate corrective action.

8. Before either Party reports a trouble condition, they shall use their best efforts to isolate the trouble to the other's facilities.

   a. In cases where a trouble condition affects a significant portion of the other's service, the Parties shall assign the same priority provided to other interconnecting carriers.

b. The Parties shall cooperate in isolating trouble conditions.

I. Interconnection Forecasting

1. The Parties agree that during the first year of interconnection, joint forecasting and planning meetings will take place no less frequently than once per quarter.

2. The Parties shall establish joint forecasting responsibilities for traffic utilization over trunk groups. Intercompany forecast information must be provided by the Parties to each other four times a year. The quarterly forecasts shall include forecasted requirements for each trunk group identified in Paragraph G(2) of this Section. In addition, the forecast shall include, for tandem-switched traffic, the quantity of tandem-switched traffic forecasted for each subtending end office. The Parties recognize that, to the extent historical traffic data can be shared between the Parties, the accuracy of the forecasts will improve. Forecasts shall be for a minimum of three (current and plus-1 and plus-2) years;

   a. The use of Common Language Location Identifier (CLLI-MSG), which are described in Bellcore documents BR 795-100-100 and BR 795-400-100;

   b. A description of major network projects anticipated for the following six months that could affect the other Party. Major network projects include trunking or network rearrangements, shifts in anticipated traffic patterns, or other activities that are reflected by a significant increase or decrease in trunking demand for the following forecasting period. This planning will include the issues of network capacity, forecasting and compensation calculation, where appropriate.

3. If differences in quarterly forecasts of the Parties vary by more than 24 additional DS0 two-way trunks for each Local Interconnection Trunk Group, the Parties shall meet to reconcile the forecast to within 24 DS0 trunks.

4. If a trunk group is under 75 percent of centum call seconds (ccs) capacity on a monthly average basis for each month of any three month period, either Party may request to resize the trunk group, which resizing will not be unreasonably withheld. If a resizing occurs, the trunk group shall not be left with less than 25 percent excess capacity. In all cases, grade of service objectives identified below shall be maintained.

5. Each Party shall provide a specified point of contact for planning, forecasting and trunk servicing purposes.

VII. COLLOCATION

A. General Provisions

1. Collocation allows MFS to obtain dedicated space in a USWC wire center and to place equipment in such spaces to interconnect with the USWC network. MFS may request collocation at other USWC locations pursuant to the NIUER Process or through additional interconnection negotiations under the Act. USWC will provide the resources necessary for the operation and economical use of collocated equipment. POIs for network interconnection can be established through virtual or physical collocation arrangements.

2. Collocation is offered for network interconnection between the Parties. The collocated party may cross connect to other collocated parties via expanded interconnection channel terminations provided by USWC, provided that MFS's collocated equipment is used for interconnection with USWC or access to USWC's unbundled network elements. Additional terms, conditions and rates apply in conjunction with subsequent call termination (e.g., call termination charges, tandem switching, tandem-switched transport, see Section V, Reciprocal Traffic Exchange.)

3. Except when MFS purchases USWC's unbundled network transmission elements, MFS will construct its own fiber optic cable to the USWC-designated point of interconnection. USWC will extend MFS's fiber optic cable from the POI to the cable vault within the wire center. If necessary, USWC may bring the cable into compliance with USWC internal fire code standards and extend the cable to the collocated space.

4. MFS will be provided two points of entry into the USWC wire center only when there are at least two existing entry points for USWC cable and when there are vacant entrance ducts in both. USWC will promptly remove any unused cabling to free up entrance ducts when no other ducts are available. Cable entry will be limited to fiber facilities.

5. MFS. may collocate transmission equipment to terminate basic transmission facilities. MFS may request collocation of other equipment pursuant to the NIUER Process or through additional interconnection negotiations under the Act. CLEC must identify what equipment will be installed, to allow for USWC to use this information in engineering the power, floor loading, heat release, environmental particulant level, and HVAC.

6. Nothing in this part shall be construed to limit MFS's ability to obtain both virtual and physical collocation in a single location.

B. Virtual Collocation

1. USWC shall provide virtual collocation for the purpose of Interconnection or access to unbundled Network Elements subject to the rates, terms and conditions of this Agreement.

2. MFS will not have physical access to the USWC wire center building pursuant to a virtual collocation arrangement.

3. MFS will be responsible for obtaining and providing to USWC administrative codes, e.g., common language codes, for all equipment specified by MFS and installed in wire center buildings.

4. MFS will be responsible for payment of training of USWC employees for the maintenance, operation and installation of MFS's virtually collocated equipment when that equipment is different than the equipment used by USWC .

5. MFS will be responsible for payment of charges incurred in the maintenance and/or repair of MFS's virtually collocated equipment.

6. USWC does not guarantee the reliability MFS's virtually collocated equipment.

7. MFS is responsible for ensuring the functionality of virtually collocated SONET equipment provided by different manufacturers.

8. Maintenance Labor, Inspector Labor, Engineering Labor and Equipment Labor business hours are considered to be Monday through Friday, 8:00am to 5:00pm and after business hours are after 5:00pm and before 8:00am, Monday through Friday, all day Saturday, Sunday and holidays.

9. MFS will transfer possession of MFS's virtually collocated equipment to USWC via a no cost lease. The sole purpose of the lease is to provide USWC with exclusive possessory rights to MFS's virtually collocated equipment. Title to the MFS virtually collocated equipment shall not pass to USWC.

10. Installation and maintenance of MFS's virtually collocated equipment will be performed by USWC or a USWC authorized vendor.

11. MFS shall ensure that upon receipt of the MFS virtually collocated equipment by USWC, all warranties and access to ongoing technical support are passed through to USWC, all at MFS's expense. The interconnector shall advise the manufacturer and seller of the virtually collocated equipment that it will be possessed, installed and maintained by USWC.

12. MFS's virtually collocated equipment must comply with the Bellcore Network Equipment Building System (NEBS) Generic Equipment Requirements TR-NWT-000063, Company wire center environmental and transmission standards and any statutory (local, state or federal) and/or regulatory requirements in effect at the time of equipment installation or that subsequently become effective. MFS shall provide USWC interface specifications (e.g., electrical, functional, physical and software) of MFS's virtually collocated equipment.

13. USWC may restrict the type of virtually collocated equipment. USWC will only permit basic transmission terminating equipment to be virtually collocated by MFS. MFS may request collocation of other equipment pursuant to the NIUER Process or through additional interconnection negotiations under the Act..

14. MFS must specify all software options and associated plug-ins for its virtually collocated equipment.

15. MFS is responsible for purchasing and maintaining a supply of spares. Upon failure of MFS's virtually collocated equipment, MFS is responsible for transportation and delivery of maintenance spares to USWC at the wire center housing the failed equipment.

C. Physical Collocation

1. USWC shall provide to MFS Physical Collocation of equipment necessary for Interconnection or for access to unbundled Network Elements, except that USWC may provide for Virtual collocation if USWC demonstrates to the Commission that Physical Collocation is not practical for technical reasons or because of space limitations, as provided in Section 251(c)(6) of the Act. USWC shall provide such Collocation for the purpose of Interconnection or access to unbundled Network Elements, except as otherwise mutually agreed to in writing by the Parties or as required by the FCC or the appropriate Commission subject to the rates, terms and conditions of this Agreement.

2. Where MFS is Virtually Collocated in a premises which was initially prepared for Virtual Collocation, MFS may elect to (i) retain its Virtual Collocation in that premises and expand that Virtual Collocation according to the rates, terms and conditions of this Agreement, or (ii) unless it is not practical for technical reasons or because of space limitations, convert its Virtual Collocation at such premises to Physical Collocation, in which case MFS shall coordinate the construction and rearrangement with USWC of its equipment (IDLC and transmission) and circuits for which MFS shall pay USWC at applicable rates, and pursuant to the other terms and conditions in this Agreement. In addition, all applicable Physical Collocation recurring charges shall apply.

3. MFS will be allowed access to the POI on non-discriminatory terms. MFS owns and is responsible for the installation, maintenance and repair of its transmission equipment located within the space rented from USWC.

4. MFS must use leased space promptly and may not warehouse space for later use or sublease to another provider. Physical collocation is offered in wire centers on a space-available, first come, first-served basis.

5. The minimum standard leasable amount of floor space is 100 square feet. MFS must efficiently use the leased space; no more than 50% of the floor space may be used for storage cabinets and work surfaces. The Commission will be the final arbitrator in points of dispute between the parties.

6. MFS's leased floor space will be separated from other competitive providers and USWC space through cages or hard walls. MFS may elect to have USWC construct the cage, or choose from USWC approved contractors to construct the cage, meeting USWC's installation Technical Publication 77350.

7. The following standard features will be provided by USWC:

   a. Heating, ventilation and air conditioning.

   b. Smoke/fire detection and any other building code requirement.

8. USWC Responsibilities.

   a. Design the floor space within each wire center which will constitute CLEC's leased space.

   b. Ensure that the necessary construction work is performed to build CLEC's leased physical space and the riser from the vault to the leased physical space.

   c. Develop a quotation specific to MFS's request.

   d. Extend USWC-provided and owned fiber optic cable from the POI through the cable vault and extending the cable to MFS's leased physical space or place the cable in fire retardant tubing prior to extension to MFS's leased physical space.

   e. Installation and maintenance and all related activity necessary to provide Channel Termination between USWC's and MFS's equipment.

   f. Work cooperatively with MFS in matters of joint testing and maintenance.

9. MFS Responsibilities

   a. Determine the type of enclosure for the physical space.

   b. Where applicable, procure, install and maintain all fiber optic facilities up to the USWC designated POI.

   c. Install, maintain, repair and service all MFS's equipment located in the leased physical space.

   d. Ensure that all equipment installed by MFS complies with Bellcore Network Equipment Building System Generic Equipment requirements, USWC wire center environmental and transmission standards, and any statutory (local, federal, or state) or regulatory requirements in effect at the time of equipment installation or that subsequently become effective.

10. Once construction is complete for physical collocation and MFS has accepted its leased physical space, MFS may order its DS0, DS1, DS3 or other Expanded Interconnection Channel Terminations.

11. MFS may not extend dark fiber to MFS's leased physical space or connecting DS1/DS3 Channel Terminations to USWC dark fiber.

12. If, at any time, USWC determines that the equipment or the installation does not meet requirements, MFS will be responsible for the costs associated with the removal, modification to, or installation of the equipment to bring it into compliance. If MFS fails to correct any non-compliance within fifteen (15) days of written notice of non-compliance, USWC may have the equipment removed or the condition corrected at MFS's expense.

13. If, during installation, USWC determines MFS activities or equipment are unsafe, non-standard or in violation of any applicable laws or regulations, USWC has the right to stop work until the situation is remedied. If such conditions pose an immediate threat to the safety of USWC employees, interfere with the performance of USWC's service obligations, or pose an immediate threat to the physical integrity of the conduit system or the cable facilities, USWC may perform such work and/or take action as is necessary to correct the condition at MFS's expense.

14. For each Physical Collocation, the Parties agree to execute an individual 'Physical Collocation Agreement' in form attached hereto as Appendix C.

D. Collocation Rate Elements

1. Common Rate Elements

The following rate elements are common to both virtual and physical collocation:

a. Quote Preparation Fee. This covers the work involved in developing a quotation for MFS for the total costs involved in its collocation request.

b. Entrance Facility. Provides for fiber optic cable on a per fiber basis from the point of interconnection utilizing USWC owned, conventional single mode type of fiber optic cable to the collocated equipment (for virtual collocation) or to the leased space (for physical collocation). Entrance facility includes riser, fiber placement, entrance closure, conduit/innerduct, and core drilling.

c. Cable Splicing. Represents the labor and equipment to perform a subsequent splice to the MFS provided fiber optic cable after the initial installation splice. Includes a per-setup and a per-fiber-spliced rate elements.

d. -48 Volt Power. Provides -48 volt power to the MFS collocated equipment. Charged on a per ampere basis.

e. 48 Volt Power Cable. Provides for the transmission of -48 Volt DC power to the collocated equipment. It includes engineering, furnishing and installing the main distribution bay power breaker, associated power cable, cable rack and local power bay to the closest power distribution bay. It also includes the power cable (feeders) A and B from the local power distribution bay to the leased physical space (for physical collocation) or to the collocated equipment (for virtual collocation).

f. Inspector Labor. Provides for the USWC qualified personnel necessary when MFS requires access to the point of interconnection after the initial installation or access to its physical collocation floor space, where an escort is required A call-out of an inspector after business hours is subject to a minimum charge of four hours. The minimum call-out charge shall apply when no other employee is present in the location, and an 'off-shift' USWC employee (or contract employee) is required to go 'on-shift' on behalf of MFS.

g. Expanded Interconnection Channel Termination (EICT). Telecommunications interconnection between MFS's collocated equipment and USWC's network is accomplished via an

Expanded Interconnection Channel Termination (EICT). This element can be at the DS0, DS1, DS3 or other level depending on the USWC service it is connecting to. Connection to any other network or telecommunications source within the wire center is allowed only through USWC services.

h. Expanded Interconnection Channel Regeneration. Required when the distance from the leased physical space (for physical collocation) or from the collocated equipment (for virtual collocation) to the USWC network is of sufficient length to require regeneration.

2. Physical Collocation Rate Elements

The following rate elements apply only to physical collocation arrangements:

a. Floor Space Rental. Provides the monthly rent for the leased physical space, property taxes and base operating cost without -48 Volt DC power. Includes convenience 110 AC, 15 amp electrical outlets provided in accordance with local codes and may not be used to power transmission equipment or -48 Volt DC power generating equipment. Also includes maintenance for the leased space; provides for the preventative maintenance (climate controls, filters, fire and life systems and alarms, mechanical systems, standard HVAC); biweekly housekeeping services (sweeping, spot cleaning, trash removal) of the USWC wire center areas surrounding the leased physical space and general repair and maintenance.

b. Enclosure Buildout. The Enclosure Buildout element, either Cage or, at the MFS's option, Hardwall, includes the material and labor to construct the enclosure specified by MFS or MFS may choose from USWC approved contractors to construct the cage, meeting USWC's installation Technical Publication 77350. It includes the enclosure (cage or hardwall), air conditioning (to support MFS loads specified), lighting (not to exceed 2 watts per square foot), and convenience outlets (3 per cage or number required by building code for the hardwall enclosure). Also provides for humidification, if required.

c. Pricing for the above physical collocation rate elements will be provided on an individual basis due to the uniqueness of MFS's requirements, central office structure and arrangements.

3. Virtual Collocation Rate Elements

The following rate elements apply uniquely to virtual collocation:

a. Maintenance Labor -- Provides for the labor necessary for repair of out of service and/or service-affecting conditions and preventative maintenance of the MFS virtually collocated equipment. MFS is responsible for ordering maintenance spares. USWC will perform maintenance and/or repair work upon receipt of the replacement maintenance spare and/or equipment for MFS. A call-out of a maintenance technician after business hours is subject to a minimum charge as specified above.

b. Training Labor -- Provides for the billing of vendor-provided training for USWC personnel on a metropolitan service area basis, necessary for MFS virtually collocated equipment which is different from USWC provided equipment. USWC will require three USWC employees to be trained per metropolitan service area in which the MFS virtually collocated equipment is located. If, by an act of USWC , trained employees are relocated, retired, or are no longer available, USWC will not require MFS to provide training for additional USWC employees for the same virtually collocated equipment in the same metropolitan area. The amount of training billed to MFS will be reduced by half, should a second collocator in the same metropolitan area select the same virtually collocated equipment as MFS.

c. Equipment Bay -- Provides mounting space for the MFS virtually collocated equipment. Each bay includes the 7 foot bay, its installation, all necessary environmental supports. Mounting space on the bay, including space for the fuse panel and air gaps necessary for heat dissipation is limited to 78 inches. The monthly rate is applied per shelf.

d. Engineering Labor -- Provides the planning and engineering of the MFS virtually collocated equipment at the time of installation, change or removal.

e. Installation Labor -- Provides for the installation, change or removal of the MFS virtually collocated equipment.

E. Collocation Installation Intervals

The following intervals are common to both virtual and physical collocation:

1. Acknowledgment of Floor Space Availability. Within fifteen days of the receipt by USWC from MFS of a Request for Collocation and an associated Quote Preparation Fee, USWC will notify MFS whether the sufficient floor space is available to accommodate MFS's request.

2. Quote Preparation. Within twenty-five business days of the receipt by USWC from MFS of a Request for Collocation and an associated Quote

Preparation Fee, USWC provide MFS with a written quotation containing all nonrecurring charges for the requested collocation arrangement.

3. Quote Acceptance. Within thirty days of the receipt by MFS of the USWC quotation, MFS will accept the USWC proposed quotation. Acceptance shall require payment to USWC of fifty percent of the non-recurring charges provided on the quotation.

4. Completion of Cage Construction (physical collocation only). Within 90 days of the acceptance of the quotation by MFS, the construction of the necessary cage/hardwall enclosure shall be completed. At this time, the leased floor space will be available to MFS for installation of its collocated equipment.

5. Completion of Collocated Equipment Installation (virtual collocation only) -- USWC shall complete the installation of MFS's collocated equipment within 90 days of USWC's receipt of MFS's collocated equipment. The installation of line cards and other minor modifications shall be performed by USWC on intervals equivalent to those that USWC applies to itself, but in no instance shall any such interval exceed 90 days.

VIII. INTERIM NUMBER PORTABILITY

A. General Terms

1. The Parties shall provide Number Portability on a reciprocal basis to each other to the extent technically feasible, and in accordance with rules and regulations as from time to time prescribed by the FCC and/or the Commission.

2. Until Number Portability is implemented by the industry pursuant to regulations issued by the FCC or the Commission, the Parties agree to provide Interim Telecommunications Number Portability ("INP") to each other through remote call forwarding, direct inward dialing and NXX migration.

3. Once permanent number portability is implemented pursuant to FCC or Commission regulation, either Party may withdraw, at any time and at its sole discretion, its INP offerings, subject to advance notice to the other Party and coordination to allow the seamless and transparent conversion of INP customer numbers to permanent number portability. Upon implementation of permanent number portability pursuant to FCC regulations, both parties agree to conform and provide such permanent number portability.

4. USWC will update its Line Information Database ("LIDB") listings for retained numbers, and restrict or cancel calling cards associated with these forwarded numbers as directed by MFS. LIDB updates shall be completed by the Parties on the same business day each INP arrangement is activated.

5. Upon request, USWC shall provide to MFS INP via Direct Inward Dial Trunks pursuant to applicable tariffs.

6. Where either party has activated an entire NXX for a single customer, or activated a substantial portion of an NXX for a single customer with the remaining numbers in that NXX either reserved for future use or otherwise unused, if such customer chooses to receive service from the other Party, the first Party shall cooperate with the second Party to have the entire NXX reassigned in the LERG (and associated industry databases, routing tables, etc.) to an End Office operated by the second Party. Such transfer will be accomplished with appropriate coordination between the Parties and subject to appropriate industry lead-times for movement of NXXs from one switch to another. Other applications of NXX migration will be discussed by the Parties as circumstances arise.

B. Description Of Service

1. Interim Number Portability Service ("INP") is a service arrangement that can be provided by USWC to MFS or by MFS to USWC. For the purposes of this section, the Party porting traffic to the other Party shall be referred to as the "INP Provider" and the Party receiving INP traffic for termination shall be referred to as the "INP Requestor".

2. INP applies to those situations where an end-user customer elects to transfer service from the INP Provider to the INP Requestor and they also wish to retain their existing telephone number. INP consists of INP Provider's provision to the INP Requestor the capability to route calls placed to telephone numbers assigned to the INP Provider's switches to the INP Requestor's switches. INP is available only for working telephone numbers assigned to the INP Provider's customers who request to transfer to the INP Requestor's service.

3. INP is available as INP-Remote Call Forwarding ("INP-RCF") permitting a call to a INP Provider's assigned telephone number to be translated to the INP Requestor's dialable local number. INP Requestor may terminate the call as desired. Additional capacity for simultaneous call forwarding is available where technically feasible. The INP Requestor will need to specify the number of simultaneous calls to be forwarded for each number ported.

4. INP is subject to the following restrictions:

   a. An INP telephone number may be assigned by INP Requestor only to the Requestor's customers located within the INP Provider's local calling area and toll rating area that is associated with the NXX of the portable number.

   b. INP is applicable only if the INP Requestor is engaged in a reciprocal traffic exchange arrangement with the INP Provider.

   c. Only the existing, INP Provider assigned end-user telephone number may be used as a ported number for INP.

   d. INP will not be provided by the INP Provider for customers whose accounts are in arrears and who elect to make a change of service provider unless and until the following conditions are met:

      i. Full payment for the account (including directory advertising charges associated with the customer's telephone number) is made by customer or INP Requestor agrees to make full payment on behalf of customer.

ii. INP Provider is notified in advance of the change in service provider and a Change of Responsibility form is issued.

iii. INP Provider accepts the transfer of responsibility.

e. INP services shall not be re-sold, shared or assigned by either party to another LEC or CLEC.

f. INP is not offered for NXX Codes 555, 976, 960 and coin telephones, and Service Access Codes (i.e. 500, 700, 800/888, 900). INP is not available for FGA seven-digit numbers, including foreign exchange (FEX), FX and FX/ONAL and foreign Central Office Service. Furthermore, INP numbers may not be used for mass calling events.

g. The ported telephone number will be returned to the originating company (or to the common pool of telephone numbers upon implementation of permanent number portability) when the ported service is disconnected. The company purchasing a ported number may not retain it and reassign it to another customer. The normal intercept announcement will be provided by the INP Provider for the period of time until the telephone number is reassigned by the Provider.

5. Ordering and Maintenance

a. The INP Requestor is responsible for all dealings with and on behalf of its end users, including all end user account activity, e.g. end user queries and complaints.

b. Each party is responsible for obtaining a Letter of Authorization (LOA) from its end users who requests a transfer of the end user's telephone number from the other party.

c. The INP Provider will work cooperatively with the Requestor to ensure a smooth customer transition and to avoid unnecessary duplication of other facilities (e.g., unbundled loops). The Parties will cooperate to develop intercompany procedures to implement the requirements of this paragraph.

d. If an end user requests transfer of service from the INP Requestor back to the INP Provider, the Provider may rely on that end user request to institute cancellation of the INP service. The INP Provider will provide at least 48 hours notice to the INP Requestor of the cancellation of INP service, and will work cooperatively with the Requestor to ensure a smooth customer transition and to avoid unnecessary duplication of other facilities (e.g., unbundled loops). The Parties will cooperate to develop intercompany procedures to implement the requirements of this paragraph.

e. Certain features are not available on calls passed through INP service.

f. The Requestor's designated INP switch must return answer and disconnect supervision to the INP Provider's switch.

g. The Requestor will provide to the E911 database provider the network telephone number that the Requestor assigned to the Provider-assigned, ported telephone number. Updates to and maintenance of the INP information to the E911 database are the responsibility of the INP Requestor.

h. The INP Requestor will submit to the INP Provider a disconnect order for each ported number that is relinquished by the Requestor's end users.

6. Cost Recovery

The parties agree that, for the purposes of this agreement that the following cost structure is an acceptable measure of the costs incurred by the INP Provider.

a. Number Ported -- This cost is incurred per number ported, per month. Should the INP Requestor provide the transport from the Provider's end office to the Requestor's end office switch, a lower cost is incurred. This cost represents a single call path from the Provider's end office switch to the Requestor for the portable number.

b. Additional Call Path -- This cost is incurred per additional call path per month added to a particular ported telephone number. Should the INP Requestor provide the transport from the Provider's end office to the Requestor's end office switch, a lower cost is incurred.

c. Service Establishment -- Per Switch. This non-recurring cost is incurred for each INP Provider's end office switch that is equipped to provide INP to the INP Requestor.

d. Service Establishment -- Per Number -- This non-recurring cost is for each telephone number equipped with INP.

e. The parties agree that Appendix A reasonably identifies the above costs.

f. Solely for the purposes of this arbitrated agreement between USWC and MFS, these two parties agree to assign between themselves, on an interim basis, interim number portability costs

on the basis of active local numbers, recognizing that such assignment necessarily excludes recovery from other industry participants. Each party is free to advocate the assignment of interim number portability costs to other industry participants as part of the appropriate industry-wide cost recovery method.[5]

g. The parties shall, each quarter, exchange the confidential data necessary to implement the above pro-rata assignment of interim number portability costs.

h. The INP Provider will, when using RCF, send the original ("ported") number over the interconnection arrangements as the calling party number using the signaling protocol applicable to the arrangements. The INP Requestor will capture and measure the number of minutes of INP incoming traffic. USWC will provide (and update quarterly) percentage distributions of all terminating traffic in the LATA by jurisdictional nature of the traffic: a) local; b)intrastate, intraLATA switched access; c) intrastate, interLATA switched access; d) interstate, intraLATA switched access; e) interstate, interLATA switched access.. Separate residence and business percentage distributions will be provided, to the extent possible. The Parties agree to work cooperatively to develop and exchange the data required to implement this paragraph. The appropriate percentage will be applied to the number of minutes of INP traffic in each category to determine the number of minutes eligible for additional "pass through" switched access compensation. Pass through switched access compensation will be paid at the following rates:

For all intra-LATA toll and inter-LATA minutes delivered over INP, USWC will pay, in lieu of reciprocal compensation, all terminating switched access elements otherwise due the terminating office provider, including:

end office switching;
IC (interconnection charge);
CCLC; and
appropriate portion of tandem switched transport.[6]

[5] Section f has been incoroporated pursuant to the Arbitrator's Decision in Docket UT-960323.

[6] The Parties recognize that the Arbitrator has ordered that the Parties incorporate a provision in this Agreement requiring that "each carrier issue a bill to the IXC for its portion of the access charges, based upon the functions and facilities provided by the carrier for call termination" and that the Parties' agreement should "take into account the fact that USWC receives compensation for INP costs by means of the Remote Call Forwarding charges". Because the Parties recognize that such a provision would incur additional costs and for purposes of consistency with other arbitrated results, the Parties agree to the above language.

i. Rates are contained in Appendix A.

IX. DIALING PARITY

The Parties shall provide Dialing Parity to each other as required under Section 251(b)(3) of the Act. This Agreement does not impact either Party's ability to default intraLATA toll via a specific dialing pattern until otherwise required by the Act.

X. ACCESS TO TELEPHONE NUMBERS

A. Number Resources Arrangements.

1. Nothing in this Agreement shall be construed in any manner to limit or otherwise adversely impact either Party's right to the request and assignment of any NANP number resources including, but not limited to, central office (NXX) codes pursuant to the Central Office Code Assignment Guidelines (last published by the Industry Numbering Committee ("INC") as INC 95-0407-008, Revision 4/19/96, formerly ICCF 93-0729-010). NXXs, and the initial points of interface for interconnection between the Parties' networks, will be included in Addenda to this Agreement.

2. To the extent USWC serves as Central Office Code Administrator for a given region, USWC will support all MFS requests related to central office (NXX) code administration and assignments in the manner required and consistent with the Central Office Code Assignment Guidelines.

3. The parties shall provide local dialing parity to each other as required under Section 251(b)(3) of the Act.

4. The Parties will comply with code administration requirements as prescribed by the Federal Communications Commission, the Commission, and accepted industry guidelines.

5. It shall be the responsibility of each Party to program and update its own switches and network systems pursuant to the Local Exchange Routing Guide (LERG) guidelines to recognize and route traffic to the other Party's assigned NXX codes at all times. Neither Party shall impose any fees or charges whatsoever on the other Party for such activities. The Parties will cooperate to establish procedures to ensure the timely activation of NXX assignments in their respective networks.

6. Each Party shall be responsible for notifying its customers of any changes in numbering or dialing arrangements to include changes such as the introduction of new NPAs or new NXX codes.

7. Until an impartial entity is appointed to administer telecommunications numbering and to make such numbers available on an equitable basis, USWC will assign NXX codes to MFS in accordance with national guidelines at no charge.

8. Each Party is responsible for administering NXX codes assigned to it. Each Party is responsible for obtaining Local Exchange Routing Guide ("LERG") listings of CLLI codes assigned to its switches. Each party shall use the LERG published by Bellcore or its successor for obtaining routing information and shall provide all required information to Bellcore for maintaining the LERG in a timely manner.

XI. CALL COMPLETION FROM USWC OPERATORS

USWC Operators will provide operator call completion and call completion and rating information and like assistance to any end user customer reaching USWC Operators (including information for calls to MFS' NXXs) in the same manner as they provide such services for end user customers served by USWC NXXs and for calls involving only USWC NXXs.

XII. BUSY LINE VERIFY/INTERRUPT

A. Busy Line Verification ("BLV") is performed when one Party's Customer requests assistance from the operator bureau to determine if the called line is in use, however, the operator bureau will not complete the call for the Customer initiating the BLV inquiry. Only one BLV attempt will be made per Customer operator bureau call, and a charge shall apply whether or not the called party releases the line.

B. Busy Line Verification Interrupt ("BLVI") is performed when one Party's operator bureau interrupts a telephone call in progress after BLV has occurred. The operator bureau will interrupt the busy line and inform the called party that there is a call waiting. The operator bureau will only interrupt the call and will not complete the telephone call of the Customer initiating the BLVI request. The operator bureau will make only one BLVI attempt per Customer operator telephone call and the applicable charge applies whether or not the called party releases the line.

C. The rate for Busy Line Verify shall be $.72 per call, and for Busy Line Verify and Interrupt, $.87 per call.

D. Each Party's operator bureau shall accept BLV and BLVI inquiries from the operator bureau of the other Party in order to allow transparent provision of BLV/BLVI Traffic between the Parties' networks.

E. Each Party shall route BLV/BLVI Traffic inquiries over separate direct trunks (and not the Local/IntraLATA Trunks) established between the Parties' respective operator bureaus. Unless otherwise mutually agreed, the Parties shall configure BLV/BLVI trunks over the Interconnection architecture defined in Section VI, Interconnection, consistent with the Joint Grooming Plan. Each Party shall compensate the other Party for BLV/BLVI Traffic as set forth above.

XIII. TOLL AND ASSISTANCE OPERATOR SERVICES

A. Description of Service.

Toll and Assistance refers to functions customers associate with the "O" operator. Subject to availability and capacity, access may be provided via operator services trunks purchased from USWC or provided by MFS via collocation arrangements to route calls to MFS's platform.

B. Functions include:

1. O-Coin, Automatic Coin Telephone Service (ACTS) - these functions complete coin calls, collect coins and provide coin rates.

2. Alternate Billing Services (ABS or O+ dialing): Bill to third party, Collect and Mechanized Credit Card System (MCCS).

3. O- or operator assistance which provides general assistance such as dialing instruction and assistance, rate quotes, emergency call completion and providing credit.

4. Automated Branding - ability to announce the carrier's name to the customer during the introduction of the call.

5. Rating Services - operators have access to tables that are populated with all toll rates used by the operator switch.

C. Pricing for Toll and Assistance Operator Services shall be determined on a case-by-case basis, upon request.

D. Interconnection to the USWC Toll and Assistance Operator Services from an end office to USWC T/A is technically feasible at three distinct points on the trunk side of the switch. The first connection point is an operator services trunk connected directly to the T/A host switch. The second connection point is an operator services trunk connected directly to a remote T/A switch. The third connection point is an operator services trunk connected to a remote access tandem with operator concentration capabilities.

E. Trunk provisioning and facility ownership will follow the guidelines recommended by the Trunking and Routing, IOF and Switch sub-teams. All trunk interconnections will be digital.

F. Toll and Assistance interconnection will require an operator services type trunk between the end office and the interconnection point on the USWC switch.

G. Connecting a position to the host system requires two circuits (one voice and one data) per position on a T1 facility.

H. The technical requirements of operator services type trunks and the circuits to connect the positions to the host are covered in the OSSGR under Section 6 (Signaling) and Section 10 (System Interfaces) in general requirements form.

XIV. DIRECTORY ASSISTANCE

A. USWC agrees to (1) provide to MFS' operators on line access to USWC's directory assistance database; (2) provide to MFS unbranded directory assistance service (3) provide to MFS directory assistance service under MFS brand (where technically feasible); (4) allow MFS or an MFS designated operator bureau to license USWC's directory assistance database for use in providing competitive directory assistance services; and (5) in conjunction with (2) or (3) above, provide caller-optional directory assistance call completion service which is comparable in every way to the directory assistance call completion service USWC makes available to its own users and to provide caller name and number.

B. The price for directory assistance, provided pursuant to this Agreement, shall be 34 cents per call. As an alternative, the Parties may obtain directory assistance service pursuant to effective tariffs.

C. The price for directory call completion services shall be 35 cents per call, pending the completion of an approved TELRIC cost study. Additional charges, for USWC intraLATA toll services, also apply for completed intraLATA toll calls. Long distance service shall be available pursuant to the wholesale discount provided in Section XXX, Resale, herein. Call completion service is an optional service. MFS may, at its option, request USWC to not provide call completion services to MFS customers.

XV. DIRECTORY LISTINGS

A. Scope

1. Listings Service ("Listings") consists of USWC placing the names, addresses and telephone numbers of MFS's end users in USWC's listing database, based on end user information provided to USWC by MFS. USWC is authorized to use Listings in Directory Assistance (DA) and as noted in paragraph 4, below.

2. MFS will provide in standard, mechanized format, and USWC will accept at no charge, one primary listing for each main telephone number belonging to MFS's end user customers. Primary listings are as defined for USWC end users in USWC's general exchange tariffs. MFS will be charged for premium listings, e.g., additional, foreign, cross reference, informational, etc., at USWC's general exchange listing tariff rates. MFS utilizing Remote Call Forwarding for local number portability can list only one number without charge - either the end customer's original telephone number or the MFS-assigned number. The standard discounted rate for an additional listing applies to the other number.

3. USWC will furnish MFS the Listings format specifications. MFS may supply a maximum of one batch file daily, containing only Listings that completed on or prior to the transmission date. USWC cannot accept Listings with advance completion dates. Large volume activity (e.g., 100 or more listings) on a caption set is considered a project that requires coordination between MFS and USWC to determine time frames.

4. MFS grants USWC a non-exclusive license to incorporate Listings information into its directory assistance database. MFS hereby selects one of two options for USWC's use of Listings and dissemination of Listings to third parties.

   EITHER:

   a. Treat the same as USWC's end user listings - No prior authorization is needed for USWC to release Listings to directory publishers or other third parties. USWC will incorporate Listings information in all existing and future directory assistance applications developed by USWC. MFS authorizes USWC to sell and otherwise make Listings available to directory publishers. USWC shall be entitled to retain all revenue associated with any such sales. Listings shall not be provided or sold in such a manner as to segregate end users by carrier.

   OR:

   b. Restrict to USWC's directory assistance -- Prior authorization required by MFS for all other uses. MFS makes its own, separate agreements with USWC, third parties and directory publishers for

all uses of its Listings beyond DA. USWC will sell Listings to directory publishers (including USWC's publisher affiliate), other third parties and USWC products only after the third party presents proof of MFS's authorization. USWC shall be entitled to retain all revenue associated with any such sales. Listings shall not be provided or sold in such a manner as to segregate end users by carrier.

5. To the extent that state tariffs limit USWC's liability with regard to Listings, the applicable state tariff(s) is incorporated herein and supersedes Section XXXIV(U), "Limitation of Liability", of this Agreement with respect to Listings only.

B. USWC Responsibilities

1. USWC is responsible for maintaining Listings, including entering, changing, correcting, rearranging and removing Listings in accordance with MFS orders. USWC will take reasonable steps in accordance with industry practices to accommodate non-published and non-listed Listings provided that MFS has supplied USWC the necessary privacy indicators on such Listings.

2. USWC will include MFS Listings in USWC's Directory Assistance service to ensure that callers to USWC's Directory Assistance service have non-discriminatory access to MFS's Listings.

3. USWC will incorporate MFS Listings provided to USWC in the white pages directory published on USWC's behalf.

C. MFS Responsibilities

1. MFS agrees to provide to USWC its end user names, addresses and telephone numbers in a standard mechanized format, as specified by USWC.

2. MFS will supply its ACNA/CIC or CLCC/OCN, as appropriate, with each order to provide USWC the means of identifying Listings ownership.

3. MFS represents and warrants the end user information provided to USWC is accurate and correct. MFS further represents and warrants that it has reviewed all Listings provided to USWC, including end user requested restrictions on use such as non-published and non-listed. MFS shall be solely responsible for knowing and adhering to state laws or rulings regarding Listings (e.g., no solicitation requirements in the states of Arizona and Oregon, privacy requirements in Colorado), and for supplying USWC with the applicable Listing information.

4. MFS is responsible for all dealings with, and on behalf of, MFS's end users, including:

a. All end user account activity, e.g. end user queries and complaints.

b. All account maintenance activity, e.g., additions, changes, issuance of orders for Listings to USWC.

c. Determining privacy requirements and accurately coding the privacy indicators for MFS's end user information. If end user information provided by MFS to USWC does not contain a privacy indicator, no privacy restrictions will apply.

d. Any additional services requested by MFS's end users.

D. The terms contained in this Section refer specifically to the provision of Listings from MFS to USWC. The Parties acknowledge that the Telecommunications Act of 1996 imposes reciprocal obligations on incumbent and new entrant Local Exchange providers with respect to directory assistance listings and white pages listings. As a result, the Parties agree that the terms in this Section are reciprocal and also include the provision of Listings from USWC to MFS, in the event that MFS provides its own directory assistance service or publishes its own white pages directory.

XVI. U S WEST DIRECT ISSUES

USWC and MFS agree that certain issues, such as yellow page advertising, directory distribution, access to call guide pages, yellow page listings, will be the subject of negotiations between MFS and directory publishers, including U S WEST Direct. USWC acknowledges that MFS may request USWC to facilitate discussions between MFS and U S WEST Direct.

XVII. ACCESS TO POLES, DUCTS, CONDUITS, AND RIGHTS OF WAY

Each Party shall provide the other Party access to its poles, ducts, rights-of-way and conduits it controls on terms, conditions and prices comparable to those offered to any other entity pursuant to each party's applicable tariffs and/or standard agreements.

XVIII. ACCESS TO DATABASES

In accordance with Section 271 of the Act, USWC shall provide MFS with interfaces to access USWC's databases and associated signaling necessary for the routing and completion of MFS' traffic. Except where otherwise specified, access to such databases, and the appropriate interfaces, shall be made available to MFS via a Network Interconnection and Unbundled Element Request.

XIX. NOTICE OF CHANGES

If a Party makes a change in its network which it believes will materially affect the inter-operability of its network with the other Party, the Party making the change shall provide advance notice of such change to the other Party in accordance with the applicable FCC regulations.

XX. 911/E-911 SERVICE

A. Scope.

1. MFS exchanges to be included in USWC's E-911 Data Base will be indicated via written notice and will not require an amendment to this Agreement.

2. In counties where USWC has obligations under existing agreements as the primary provider of the 911 System to the county, MFS will participate in the provision of the 911 System as described in this Agreement.

   a. Each party will be responsible for those portions of the 911 System for which it has total control, including any necessary maintenance to each Party's portion of the 911 System.

   b. USWC will be responsible for maintaining the E-911 Data Base. USWC will provide a copy of the Master Street Address Guide ("MSAG"), and periodic updates, to MFS.

   c. MFS assumes all responsibility for the accuracy of the data that MFS provides to USWC for MSAG preparation and E-911 Data Base operation.

   d. MFS will provide end user data to the USWC ALI data base utilizing NENA-02-001 Recommended Formats For Data Exchange, NENA-02-002 Recommended Standard For Street Thoroughfare Abbreviations and NENA-02-003 Recommended Protocols For Data Exchange. USWC will furnish MFS any variations to NENA recommendations required for ALI data base input.

   e. MFS will provide end user data to the USWC ALI data base that are Master Street Address Guide (MSAG) valid and meet all components of the NENA-02-004 Recommended Measurements For Data Quality.

   f. MFS will update its end user records provided to the USWC ALI data base to agree with the 911 MSAG standards for its service areas.

   g. USWC will provide MFS with the identification of the USWC 911 controlling office that serves each geographic area served by MFS.

   h. The Parties will cooperate in the routing of 911 traffic in those instances where the ALI/ANI information is not available on a particular 911 call.

i. USWC will provide MFS with the ten-digit telephone numbers of each PSAP agency, for which USWC provides the 911 function, to be used by MFS operators for handling emergency calls in those instances where the MFS customer dials "O" instead of "911".

3. If a third party; i.e., LEC, is the primary service provider to a county, MFS will negotiate separately with such third party with regard to the provision of 911 service to the county. All relations between such third party and MFS are totally separate from this Agreement and USWC makes no representations on behalf of the third party.

4. If MFS is the primary service provider to the county, MFS and USWC will negotiate the specific provisions necessary for providing 911 service to the county and will include such provisions in an amendment to this Agreement.

5. MFS will separately negotiate with each county regarding the collection and reimbursement to the county of applicable customer taxes for 911 service.

6. MFS is responsible for network management of its network components in compliance with the Network Reliability Council Recommendations and meeting the network standard of USWC for the 911 call delivery.

7. The parties shall provide a single point of contact to coordinate all activities under this Agreement.

8. Neither Party will reimburse the other for any expenses incurred in the provision of E-911 services.

B. Performance Criteria. E-911 Data Base accuracy shall be as set forth below:

1. Accuracy of ALI (Automatic Location Identification) data will be measured jointly by the PSAPs (Public Safety Answering Points) and USWC in a format supplied by USWC. The reports shall be forwarded to MFS by USWC when relevant and will indicate incidents when incorrect or no ALI data is displayed.

2. Each discrepancy report will be jointly researched by USWC and MFS. Corrective action will be taken immediately by the responsible party.

3. Each party will be responsible for the accuracy of its customer records. Each party specifically agrees to indemnify and hold harmless the other party from any claims, damages, or suits related to the accuracy of customer data provided for inclusion in the E-911 Data Base.

4. The additional parameters by which the Parties will utilize the 911 or E-911 database will be the subject of further discussion between the parties.

XXI. REFERRAL ANNOUNCEMENT

When an end user customer changes from USWC to MFS, or from MFS to USWC, and does not retain their original telephone number, the Party formerly providing service to the end user will provide a transfer of service announcement on the abandoned telephone number. Each Party will provide this referral service consistent with its tariff. This announcement will provide details on the new number that must be dialed to reach this customer.

XXII. COORDINATED REPAIR CALLS

A. MFS and USWC will employ the following procedures for handling misdirected repair calls;

1. MFS and USWC will provide their respective customers with the correct telephone numbers to call for access to their respective repair bureaus.

2. Customers of MFS shall be instructed to report all cases of trouble to MFS. Customers of USWC shall be instructed to report all cases of trouble to USWC.

3. To the extent the correct provider can be determined, misdirected repair calls will be referred to the proper provider of Basic Exchange Telecommunications Service.

4. MFS and USWC will provide their respective repair contact numbers to one another on a reciprocal basis.

5. In responding to repair calls, neither Party shall make disparaging remarks about each other, nor shall they use these repair calls as the basis for internal referrals or to solicit customers to market services. Either Party may respond with accurate information in answering customer questions.

XXIII. NETWORK INTERCONNECTION AND UNBUNDLED ELEMENT REQUEST

A. Any request for interconnection or access to an unbundled Network Element that is not already available as described herein shall be treated as a Network Interconnection and Unbundled Element Request (NIUER). USWC shall use the NIUER Process to determine technical feasibility of the requested interconnection or Network Elements and, for those items found to be feasible, to provide the terms and timetable for providing the requested items.

B. A NIUER shall be submitted in writing and shall, at a minimum, include: (a) a technical description of each requested Network Element or interconnection; (b) the desired interface specification; (c) each requested type of interconnection or access; (d) a statement that the interconnection or Network Element will be used to provide a telecommunications service; and (e) the quantity requested.

C. Within 15 business days of its receipt, USWC shall acknowledge receipt of the NIUER and in such acknowledgment advise MFS of any missing information, if any, necessary to process the NIUER. Thereafter, USWC shall promptly advise MFS of the need for any additional information that will facilitate the analysis of the NIUER.

D. Within 30 calendar days of its receipt of the NIUER and all information necessary to process it, USWC shall provide to MFS a preliminary analysis of the NIUER. The preliminary analysis shall specify: (a) USWC's conclusions as to whether or not the requested interconnection or access to an unbundled Network Element is technically feasible; and (b) any objections to qualification of the requested Network Element or interconnection under the Act.

1. If USWC determines during the 30 day period that a NIUER is not technically feasible or that the NIUER otherwise does not qualify as a Network Element of interconnection that is required to be provided under the Act, USWC shall advise MFS as soon as reasonably possible of that fact, and USWC shall promptly, but in no case later than ten days after making such a determination, provide a written report setting forth the basis for its conclusion.

2. If USWC determines during the thirty day period that the NIUER is technically feasible and otherwise qualifies under the Act, it shall notify MFS in writing of such determination within ten days.

3. As soon as feasible, but in any case within 90 days after USWC notifies MFS that the NIUER is technically feasible, USWC shall provide to MFS a NIUER quote which will include, at a minimum, a description of each interconnection and Network Element, the quantity to be provided, any interface specifications, and the applicable rates (recurring and nonrecurring) including the separately stated amortized development costs of the interconnection or the network elements and any minimum

volume and term commitments required to achieve amortization of development costs. An initial payment for development cost is appropriate only where MFS is the only conceivable customer or where requested quantity is insufficient to provide amortization.

E. If USWC has indicated minimum volume and term commitments, then within 30 days of its receipt of the NIUER quote, MFS must either agree to purchase under those commitments, cancel its NIUER, or seek mediation or arbitration.

F. If MFS has agreed to minimum volume and term commitments under the preceding paragraph, MFS may cancel the NIUER or volume and term commitment at any time, but in the event of such cancellation MFS will pay USWC's reasonable development costs incurred in providing the interconnection or network element, to the extent that those development costs are not otherwise amortized.

G. If either Party believes that the other Party is not requesting, negotiating or processing any NIUER in good faith, or disputes a determination, or quoted price or cost, it may seek arbitration or mediation under §252 of the Act. MFS is not required to use this section as the exclusive method of seeking access to interconnection or Network Elements.

XXIV. AUDIT PROCESS

A. "Audit" shall mean the comprehensive review of:

1. data used in the billing process for services performed and facilities provided under this Agreement; and

2. data relevant to provisioning and maintenance for services performed or facilities provided by either of the Parties for itself or others that are similar to the services performed or facilities provided under this Agreement for interconnection or access to unbundled elements.

B. The data referred to in subsection (2), above, shall be relevant to any performance standards that are adopted in connection with this Agreement, through negotiation, arbitration or otherwise.

C. This Audit shall take place under the following conditions:

1. Either Party may request to perform an Audit.

2. The Audit shall occur upon 30 business days written notice by the requesting Party to the non-requesting Party.

3. The Audit shall occur during normal business hours.

4. There shall be no more than one Audit requested by each Party under this Agreement in any 12-month period.

5. The requesting Party may review the non-requesting Party's records, books and documents, as may reasonably contain information relevant to the operation of this Agreement.

6. The location of the Audit shall be the location where the requested records, books and documents are retained in the normal course of business.

7. All transactions under this Agreement which are over 24 months old will be considered accepted and no longer subject to Audit.

8. Each Party shall bear its own expenses occasioned by the Audit, provided that the expense of any special data collection shall be born by the requesting Party.

9. The Party requesting the Audit may request that an Audit be conducted by a mutually agreed-to independent auditor. Under this circumstance, the costs of the independent auditor shall be paid for by the Party requesting the Audit.

10. In the event that the non-requesting Party requests that the Audit be performed by an independent auditor, the Parties shall mutually agree to the selection of the independent auditor. Under this circumstance, the costs of the independent auditor shall be shared equally by the Parties.

11. The Parties agree that if an Audit discloses error(s), the Party responsible for the error(s) shall, in a timely manner, undertake corrective action for such error(s).

D. All information received or reviewed by the requesting Party or the independent auditor in connection with the Audit is to be considered Proprietary Information as defined by this Agreement. The non-requesting Party reserves the right to require any non-employee who is involved directly or indirectly in any Audit or the resolution of its findings as described above to execute a nondisclosure agreement satisfactory to the non-requesting Party. To the extent an Audit involves access to information of other competitors, MFS and USWC will aggregate such competitors' data before release to the other Party, to insure the protection of the proprietary nature of information of other competitors. To the extent a competitor is an affiliate of the party being audited (including itself and its subsidiaries), the Parties shall be allowed to examine such affiliates' disaggregated data, as required by reasonable needs of the audit.

XXV. AUDIOTEXT AND MASS ANNOUNCEMENT SERVICES

A. The Parties agree that access to the audiotext, mass announcement and information services of each Party should be made available to the other Party upon execution of an agreement defining terms for billing and compensation of such calls. Services included in this category include 976 calls, whether flat rated or usage sensitive, intra-LATA 900 services and other intra-LATA 976-like services. Such calls will be routed over the Local Interconnection Trunks.

B. MFS and USWC will work together in good faith to negotiate and execute the agreement for billing and compensation for these services within 90 days of the execution of this Agreement. The Parties agree that their separate agreement on audiotext and mass announcement services will include details concerning the creation, exchange and rating of records, all of which will occur without any explicit charge between the Parties, as well as a process for the handling of uncollectables so that the originating Party does not have any responsibility for uncollectables.

C. Until such time that such an agreement is executed, MFS may choose to block such calls, or MFS will agree to back-bill and compensate retroactively for such calls once the subsequent agreement is executed retroactive to the effective date of this Agreement.

D. Usage Sensitive Compensation

All audiotext and mass announcement calls shall be considered toll calls for purposes of reciprocal compensation between the Parties. Compensation will be paid based on the compensation for toll calls referenced in this Agreement with respect to reciprocal compensation between the Parties, except that such compensation shall be paid by the Party terminating the call, rather than the Party originating the call.

E. Billing and Collection Compensation

Billing and collection compensation will be dealt with in the agreement referenced in this section.

XXVI. LOCAL INTERCONNECTION DATA EXCHANGE FOR BILLING

A. There are certain types of calls or types of interconnection that require exchange of billing records between the Parties, including, for example, alternate billed and Toll Free Service calls. The Parties agree that all call types must be routed between the networks, accounted for, and settled among the parties. Certain calls will be handled via the Parties' respective operator service platforms. The Parties agree to utilize, where possible and appropriate, existing accounting and settlement systems to bill, exchange records and settle revenue.

B. The exchange of billing records for alternate billed calls (e.g., calling card, bill-to-third number, and collect) will be distributed through the existing CMDS processes, unless otherwise separately agreed to by the Parties.

C. Inter-Company Settlements ("ICS") revenues will be settled through the Calling Card and Third Number Settlement System ("CATS"). Each Party will provide for its own arrangements for participation in the CATS processes, through direct participation or a hosting arrangement with a direct participant.

D. Non-ICS revenue is defined as collect calls, calling card calls, and billed to third number calls which originate on one service provider's network and terminate on another service provider's network in the same Local Access Transport Area ("LATA"). The Parties agree to negotiate and execute an Agreement within 30 days of the execution of this Agreement for settlement of non-ICS revenue. This separate arrangement is necessary since existing CATS processes do not permit the use of CATS for non-ICS revenue. The Parties agree that the CMDS system can be used to transport the call records for this traffic.

E. Both Parties will provide the appropriate call records to the intraLATA Toll Free Service Provider, thus permitting the Service Provider to bill its subscribers for the inbound Toll Free Service. No adjustments to bills via tapes, disks or NDM will be made without the mutual agreement of the Parties.

XXVII. SIGNALING ACCESS TO CALL-RELATED DATABASES

A. When MFS is purchasing local switching from USWC, USWC will provide access via the STP to call related databases used in AIN services. The Parties agree to work in the industry to define the mediated access mechanisms for SCP access. Access to the USWC SMS will be provided to CLEC to create, modify, or update information in the call related databases, equivalent to the USWC access.

B. USWC will offer unbundled signaling via LIS-Common Channel Signaling Capability (CCSAC). CCSAC service utilizes the SS7 network and provides access to call-related databases that reside at USWC 's SCPs, such as the Line Information Database (LIDB) and the 800 Database. The access to USWC 's SCPs will be mediated via the STP Port in order to assure network reliability.

C. CCSAC includes:

1. Entrance Facility - This element connects MFS's signaling point of interface with the USWC serving wire center (SWC). MFS may purchase this element or it may self-provision the entrance facility. If the entrance facility is self-provisioned, MFS would need to purchase collocation and an expanded interconnection channel termination.

2. Direct Link Transport (DLT) - This element connects the SWC to the USWC STP. MFS may purchase this element or self-provision transport directly to the STP. If MFS provides the link to the STP, it must purchase collocation and an expanded interconnection channel termination at the STP location.

3. STP Port - This element provides the switching function at the STP. One STP Port is required for each DLT Link. The Port provides access to the Service Control Point (SCP).

D. Access to Advanced Intelligent Network (AIN) functions is available only through the STP.

E. USWC will provide access to Service Management Systems (SMS) through its Service Creation Environment (SCE) on an equivalent basis as USWC provides to itself. SMS allows MFS to create modify, or update information in call related databases. Currently, the SCE process is predominantly manual.

F. The pricing for CCSAC service is provided in Appendix A.

XXVIII. INTERCONNECTION TO LINE INFORMATION DATA BASE (LIDB)

A. Description of Line Information Data Base (LIDB).

Line Information Data Base (LIDB) stores various line numbers and Special Billing Number (SBN) data used by operator services systems to process and bill calls. The operator services system accesses LIDB data to provide origination line (calling number), billing number and termination line (called number) management functions. LIDB is used for calling card validation, fraud verification, preferred IC association with the calling card, billing or service restrictions and the sub-account information to be included on the call's billing record.

B. Interfaces.

Bellcore's GR-446-CORE defines the interface between the administration system and LIDB including specific message formats. (Bellcore's TR-NWP-000029, Section 10)

C. LIDB Access.

1. All LIDB queries and responses from operator services systems and end offices are transmitted over a CCS network using a Signaling System 7 (SS7) protocol (TR-NWT-000246, Bell Communications Research Specification of Signaling System 7).

2. All LIDB queries and responses from the Public Packet Switched Network (PPSN) nodes are transmitted over one or more PPSN as TR-TSY000301 describes. The application data needed for processing LIDB data are formatted as TCAP messages. TCAP messages may be carried as an application level protocol network using SS7 protocols for basic message transport.

3. The SCP node provides all protocol and interface support. CLEC SS7 connections will be required to meet Bellcore's GR905. TR954 and USWC's Technical Publication 77342 specifications.

4. Non-USWC companies will submit LIDB updates through the exchange carrier service center and the LSS service bureau. These two centers enter information into USWC's service order process interface system, SOPI.

5. It is currently USWC's policy to allow LIDB access to non-USWC companies through regional STPs.

D. Pricing for LIDB access shall be determined on a case-by-case basis.

XXIX. CONSTRUCTION CHARGES

Pursuant to the Arbitrator's decision in Docket UT-960323, USWC may not assess separate "construction" charges in addition to the rate for unbundling and provisioning the local loop. USWC may still assess construction charges where they are provided for by tariff. In addition, construction charges proposals can be further reviewed in the generic pricing proceeding. With regard to resale, MFS will pay those construction charges that would be applicable to the end-user if the end-user ordered the same service directly from USWC.

XXX. RESALE

A. Description

1. USWC Basic Exchange Telecommunications Service (as defined in Section III) will be available for resale from USWC pursuant to the Act and will reference terms and conditions (except prices) in USWC tariffs, where applicable. Appendix A lists services which are available for resale under this Agreement, and is attached and incorporated herein by this reference.

2. Certain USWC services are not available for resale under this Agreement. USWC's Telecommunication Services which are not available for resale are identified in Appendix A.

3. Certain USWC services shall be available for resale at prices absent a wholesale discount. Such services include residence exchange service, private line, special access and switched access services, and packages of services comprised of services available for resale separately. These services are listed in Appendix A.

4. MFS may contest the legality of any resale restrictions in a USWC retail tariff through a complaint filed with the State Commission.

B. Scope

1. Basic Exchange Telecommunications Service may be resold only to the same class of customer to which USWC sells local Basic Exchange Telecommunications Service. For example:

   a. Residence service may not be resold to business customers;

   b. Basic Exchange Telecommunications Service may not be resold as a substitute for switched access service.

   c. Pursuant to the Arbitrator's Decision in Docket UT-960323, USWC's proposed paragraph has been deleted.

2. USWC shall bill MFS and MFS is responsible for all applicable charges for the resold services. MFS shall be responsible for all charges associated with services that MFS resells to an end user.

C. Ordering and Maintenance.

1. MFS, or MFS's agent, shall act as the single point of contact for its end users' service needs, including without limitation, sales, service design, order taking, provisioning, change orders, training, maintenance, trouble reports, repair, post-sale servicing, billing, collection and inquiry. MFS

shall make it clear to its end users that they are customers of the MFS for resold services. MFS's end users contacting USWC will be instructed to contact MFS; however, nothing in this Agreement shall be deemed to prohibit USWC from discussing its products and services with MFS's customers who call USWC for any reason.

2. MFS shall transmit to USWC all information necessary for the installation (billing, listing and other information), repair, maintenance and post-installation servicing according to USWC's standard procedures, as described in the USWC resale operations guide that will be provided to MFS. When USWC's end user or the end user's new service provider discontinues the end user's service in anticipation of moving to another service provider, USWC will render its closing bill to end user customer effective with the disconnection. Should MFS's end user customer, a new service provider or MFS request service be discontinued to the end user, USWC will issue a bill to MFS for that portion of the service provided to MFS. USWC will notify MFS by FAX, EDI, or other processes when end user moves to another service provider. MFS shall issue disconnect orders to USWC, which shall be coordinated with new connect orders issued by the new service provider

3. Resold services shall be installed and repaired in a manner consistent with USWC's effective tariffs with the same quality and timeliness that USWC provides to its own end users.

4. MFS shall provide USWC and USWC shall provide MFS with points of contact for order entry, problem resolution and repair of the resold services.

5. Prior to placing orders on behalf of the USWC customer, MFS shall be responsible for obtaining and have in its possession a Letter of Authorization or Agency (LOA) from the end user. MFS shall make LOAs available to USWC upon request.

6. Prior to placing orders that will disconnect a line from another reseller's account MFS is responsible for obtaining all information needed to process the disconnect order and re-establish the service on behalf of the end user. If MFS is displaced by another reseller or service provider, MFS is responsible for coordination with the other reseller or service provider. Should an end user dispute or a discrepancy arise regarding the authority of MFS to act on behalf of the end user, MFS is responsible for providing written evidence of its authority to USWC within three (3) business days. If there is a conflict between the end user designation and MFS's written evidence or its authority, USWC shall honor the designation of the end user and change the end user back to the previous service provider. If MFS does not provide the LOA within three (3) business days, or if the end user disputes the authority of the LOA, then MFS must, by the end of the third business day:

a. notify USWC to change the end user back to the previous reseller or service provider, and

b. provide any end user information and billing records MFS has obtained relating to the end user to the previous reseller, and

c. notify the end user and USWC that the change has been made, and

d. remit to USWC a slamming charge as provided in Appendix A as compensation for the change back to the previous reseller or service provider.

7. MFS shall designate the Primary Interexchange Carrier (PIC) assignments on behalf of its end users for interLATA services and intraLATA services when intraLATA presubscription is implemented.

D. MFS Responsibilities

1. MFS must send USWC complete and accurate end-user listing information for Directory Assistance, Directory, and 911 Emergency Services using the established processes of USWC. MFS must provide to USWC accurate end-user information to ensure appropriate listings in any databases in which USWC is required to retain and/or maintain end-user information. USWC assumes no liability for the accuracy of information provided by MFS.

2. MFS may not reserve blocks of USWC telephone numbers, except as allowed by tariffs.

3. MFS is liable for all fraud associated with service to its end-users and accounts. USWC takes no responsibility, and will make no adjustments to MFS's account in cases of fraud. The Parties will cooperate in the prevention and investigation of fraudulent use of resold services.

4. This agreement does not address the resale of USWC provided calling cards.

5. MFS will provide a three year forecast within ninety (90) days of signing this Agreement. The forecast shall be updated and provided to USWC on a quarterly basis in as specified in Appendix B. The initial forecast will provide:

   a. The date service will be offered (by city and/or state)
   b. The type and quantity of service(s) which will be offered
   c. MFS's anticipated order volume
   d. MFS's key contact personnel

6. In the event USWC terminates the provisioning of any resold services to MFS for any reason, MFS shall be responsible for providing any and all necessary notice to its end users of the termination. In no case shall USWC be responsible for providing such notice.

E. Rates and Charges

1. Resold services as listed in Appendix A are available for resale at the applicable resale tariff rates or at the rates or at the wholesale discount levels set forth in Appendix A.

2. If the resold services are purchased pursuant to Tariffs and the Tariff rates change, charges billed to MFS for such services will be based upon the new Tariff rates less the applicable wholesale discount as agreed to herein. The new rate will be effective upon the Tariff effective date.

3. A Customer Transfer Charge (CTC) as specified in Appendix A applies when transferring any existing account or lines to MFS.

4. A Subscriber Line Charge (SLC) will continue to be paid by MFS without discount for each local exchange line resold under this Agreement. All federal and state rules and regulations associated with SLC as found in the applicable tariffs also apply.

5. MFS will pay to USWC the PIC change charge without discount associated with MFS end user changes of inter-exchange or intraLATA carriers.

6. MFS agrees to pay USWC when its end user activates any services or features that are billed on a per use or per activation basis (e.g., continuous redial, last call return, call back calling, call trace, etc.). USWC shall provide MFS with detailed billing information (per applicable OBF standards, if any) as necessary to permit MFS to bill its end users such charges.

7. To the extent such charges apply to USWC's retail customers, special construction charges, line extension charges, and land development agreements may apply to MFS, as detailed in individual state tariffs regarding end user obligations for construction charges. Specifically, special construction charges will be applicable where, at the request of MFS on behalf of its customers, USWC constructs a greater quantity of facilities than that which USWC would otherwise construct or normally utilize.

8. Nonrecurring charges will be billed at the applicable Tariff rates, less a wholesale discount of 11%, pending determination by the Commission in the generic cost proceeding of an appropriate wholesale discount, if any.[7]

9. As part of the resold line, USWC provides operator services, directory assistance, and IntraLATA long distance with standard USWC branding. At the request of MFS and where technically feasible USWC will rebrand operator services and directory assistance in MFS's name, provided the costs associated with such rebranding are paid by MFS. MFS will have the option of obtaining such services on an unbranded basis, at no additional cost for "unbranding" the service.

10. USWC will address all MFS requests for ancillary resale systems, programs, and initiatives on an individual case basis.

F. Directory Listings

As part of each resold line, USWC will accept at no charge one primary listing for each main telephone number belonging to MFS's end user customer based on end user information provided to USWC by MFS. USWC will place MFS's listings in USWC's directory listing database for directory assistance purposes and will make listings available to directory publishers and to other third parties. Additional terms and conditions with respect to directory listings are described in Section XV, Directory Listings, herein..

G. Deposit

1. USWC may require MFS to make a suitable deposit to be held by USWC as a guarantee of the payment of charges. Any deposit required of an existing reseller is due and payable within ten days after the requirement is imposed. The amount of the deposit shall be the estimated charges for the resold service which will accrue for a two-month period. Interest on the deposit shall be accumulated by USWC at a rate equal to the federal discount rate, as published in the Wall Street Journal from time to time.

2. When the service is terminated, or when MFS has established satisfactory credit, the amount of the initial or additional deposit, with any interest due, will, at MFS's option, either be credited to MFS's account or refunded. Satisfactory credit for a reseller is defined as twelve consecutive months service as a reseller without a termination for nonpayment and with no more than one notification of intent to terminate Service for nonpayment.

[7]The Parties are unable to determine whether the Arbitrator determined whether wholesale discounts apply to nonrecurring charges. Without waiving their respective positions, the Parties have included this provision providing for an interim discount rate only.

H. Payment

1. Amounts payable under this Agreement are due and payable within thirty (30) days after the date of USWC's invoice.

2. A late payment charge of 1.5% applies to all billed balances which are not paid by the billing date shown on the next bill. To the extent MFS pays the billed balance on time, but the amount of the billed balance is disputed by MFS, and, it is later determined that a refund is due MFS, interest shall be payable on the refunded amount in the amount of 1.5% per month.

3. USWC may discontinue processing orders for the failure by MFS to make full payment for the resold services provided under this Agreement within thirty (30) days of MFS's receipt of bill.

4. USWC may disconnect for the failure by MFS to make full payment for the resold services provided under this Agreement within sixty (60) days of MFS's receipt of bill.

5. Collection procedures and the requirements for deposit are unaffected by the application of a late payment charge.

6. In the event USWC terminates the provisioning of any resold services to MFS for any reason, MFS shall be responsible for providing any and all necessary notice to its end users of the termination. In no case shall USWC be responsible for providing such notice.

7. USWC shall bill all amounts due from MFS for resold service within 90 days.[8]

[8] This provision has been included pursuant to the Arbitrator's Decision in Docket UT-960323.

XXXI. UNBUNDLED ACCESS/ELEMENTS

A. General Terms

1. USWC agrees to provide the following unbundled network elements which are addressed in more detail in later sections of this agreement: 1) local loop, 2) local and tandem switches (including all vertical switching features provided by such switches, 3) interoffice transmission facilities, 4) network interface devices, 5) signaling and call-related database facilities, 6) operations support systems functions, and 7) operator and directory assistance facilities.

2. (deleted)9

3. USWC will not restrict the types of telecommunications services MFS may offer through unbundled elements, nor will it restrict MFS from combining elements with any technically compatible equipment the MFS owns. USWC will provide MFS with all of the functionalities of a particular element, so that MFS can provide any telecommunications services that can be offered by means of the element. USWC 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. However, USWC need not combine network elements in any manner requested if not technically feasible, but must combine elements ordinarily combined in its network in the manner they are typically combined.

B. Description of Unbundled Elements

1. Tandem Switching

   USWC will provide a tandem switching element on an unbundled basis. The tandem switch element includes the facilities connecting the trunk distribution frames to the switch, and all the functions of the switch itself, including those facilities that establish a temporary transmission path between two other switches. The definition of the tandem switching element also includes the functions that are centralized in tandems rather than in separate end office switches, such as call recording, the routing of calls to operator services, and signaling conversion functions.

2. Transport

   USWC will provide unbundled access to shared transmission facilities between end offices and the tandem switch. Further, USWC will provide

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[9]The proposed USWC paragraph has been deleted pursuant to the Arbitrator's Decision in Docket UT-960323.

unbundled access to dedicated transmission facilities between its central offices or between such offices and those of competing carriers. This includes, at a minimum, interoffice facilities between end offices and serving wire centers (SWCs), SWCs and IXC POPs, tandem switches and SWCs, end offices or tandems of USWC , and the wire centers of USWC and requesting carriers. USWC will also provide all technically feasible transmission capabilities, such as DS1, DS3, and Optical Carrier levels (e.g. OC-3/12/48/96) that MFS could use to provide telecommunications services.

3. Digital Cross Connect System.

USWC will provide MFS with access to mutually agreed upon digital cross-connect system (DCS) points.

4. Unbundled Loops

a. Service Description

i. An Unbundled Loop establishes a transmission path between the USWC distribution frame (or equivalent) up to, and including, USWC's network interface device (NID). For existing loops, the inside wire connection to the NID will remain intact.

ii. Basic Unbundled Loops are available as a two-wire or four-wire, point-to-point configuration suitable for local exchange type services within the analog voice frequency range of 300 to 3000 Hz. For the two-wire configuration, MFS is requested to specify loop start, ground start or loop reverse battery options. The actual loop facilities that provide this service may utilize various technologies or combinations of technologies. Basic Unbundled Loops provide an analog facility to MFS.

(a) To the extent MFS requires an Unbundled Loop to provide ISDN, HDSL, ADSL or DS1 service, such requirements will be identified on the order for Unbundled Loop Service. Conditioning charges will apply, as required, to condition such loops to ensure the necessary transmission standard.[10]

[10] Conditioning charges were addressed at Page 11/12 of the Arbitrator's Decision in Docket UT-960323. The Parties have agreed to this footnote in order to implement Paragraph XXXI.B.4.a.ii.(a). The appropriate charges will be determined in the consolidated cost proceeding. Pending such determination, USWC will not assess conditioning charges for deloading or the removal of excessive bridge taps on Unbundled Loops which are less than 12,000 feet in length.

(b) Specific channel performance options for the loops can be ordered by identifying the Network Channel (NC)/Network Channel Interface (NCI) for the functions desired. USWC will provide MFS with the available NC/NCI codes and their descriptions.

b. Unbundled Loops are provided in accordance with the specifications, interfaces and parameters described in the appropriate Technical Reference Publications. USWC's sole obligation is to provide and maintain Unbundled Loops in accordance with such specifications, interfaces and parameters. USWC does not warrant that Unbundled Loops are compatible with any specific facilities or equipment or can be used for any particular purpose or service. Transmission characteristics may vary depending on the distance between MFS's end user and USWC's end office and may vary due to characteristics inherent in the physical network. USWC, in order to properly maintain and modernize the network, may make necessary modifications and changes to the network elements in its network on an as needed basis. Such changes may result in minor changes to transmission parameters. Changes that affect network interoperability require advance notice pursuant to Section XIX, Notice of Changes, herein.

c. Facilities and lines furnished by USWC on the premises of MFS's end user and up to the NID or equivalent are the property of USWC. USWC must have access to all such facilities for network management purposes. USWC's employees and agents may enter said premises at any reasonable hour to test and inspect such facilities and lines in connection with such purposes or upon termination or cancellation of the Unbundled Loop Service to remove such facilities and lines. The Parties agree to explore issues surrounding the extension of Unbundled Loops beyond the NID.

d. Unbundled Loops include the facilities between the USWC distribution frame up to and including USWC's NID located at MFS's end user premise. The connection between the distribution frame and MFS facilities is accomplished via channel terminations that can be ordered in conjunction with either Collocation or Unbundled Interoffice Transport Service.

e. Ordering and Maintenance.

i. For the purposes of loop assignment, tracking, and dispute resolution, USWC will require a Letter of Authorization for each existing USWC end user for which MFS has requested reassignment of the loop serving that end user.

ii. If there is a conflict between an end user (and/or its respective agent) and MFS regarding the disconnection or provision of Unbundled Loops, USWC will honor the latest dated Letter of Authorization designating an agent by the end user or its respective agent. If the end user's service has not been disconnected and Unbundled Loop Service is not yet established, MFS will be responsible to pay the nonrecurring charge as set forth herein. If the end user's service has been disconnected and the end user's service is to be restored with USWC, MFS will be responsible to pay the applicable nonrecurring charges as set forth in USWC's applicable tariff, to restore the end user's prior service with USWC.

iii. MFS is responsible for its own end user base and will have the responsibility for resolution of any service trouble report(s) from its customers. USWC will work cooperatively with MFS to resolve trouble reports when the trouble condition has been isolated and found to be within a portion of USWC's network. MFS must provide to USWC switch-based test results when testing its customer's trouble prior to USWC performing any repair functions. The Parties will cooperate in developing mutually acceptable test report standards. USWC shall provide MFS with Maintenance of service charges in accordance with applicable time and material charges in USWC tariffs will apply when the trouble is not in USWC's network.

iv. MFS will be responsible to submit to USWC a disconnect order for a Unbundled Loop that is relinquished by the end user due to cessation of service. Unbundled Loop facilities will be returned to USWC when the disconnect order is complete. In the event of transfer of the end user's service from one provider to another, the new provider will issue a request for transfer of service, resulting in the appropriate disconnect/reconnection of service.

v. The installation due date is a negotiated item. For related orders, new connects will be physically worked within the same calendar day.

vi. When ordering Unbundled Loops, MFS is responsible for obtaining or providing facilities and equipment that are compatible with the service.

vii. MFS will have responsibility for testing the equipment, network facilities and the Unbundled Loop facility. If USWC performs tests of the Unbundled Loop facility at

MFS's request, and the fault is not in the USWC facilities, a charge shall apply.

viii. MFS will be responsible for providing battery and dial tone to its connection point two days prior to the due date on the service order.

ix. The following procedures shall apply to Unbundled Loops ordered with the option of Basic Testing at Coordinated Time:

(a) On each Unbundled Loop order, MFS and USWC will agree on a cutover time at least 48 hours before that cutover time. The cutover time will be defined as a 30 minute window within which both the MFS and USWC personnel will make telephone contact to complete the cutover.

(b) Within the appointed 30 minute cutover time, the MFS person will call the USWC person designated to perform cross-connection work and when the USWC person is reached in that interval such work will be promptly performed. If the MFS person fails to call or is not ready within the appointed interval, and if MFS had not called to reschedule the work at least 2 hours prior to the start of the interval, USWC and MFS will reschedule the work order and MFS will pay the non-recurring charge for the Unbundled Loops scheduled for the missed appointment. In addition, non-recurring charges for the rescheduled appointment will apply. If the USWC person is not available or not ready at any time during the 30 minute interval, MFS and USWC will reschedule and USWC will waive the non-recurring charge for the Unbounded Loops scheduled for that interval. The standard time expected from disconnection of service on a line to the connection of the Unbundled Loop to the MFS Collocation Service is 5 minutes. If USWC causes a line to be out of service due solely to its failure for more than 15 minutes, USWC will waive the non-recurring charge for that Unbundled Loop. If unusual or unexpected circumstances prolong or extend the time required to accomplish the coordinated cut-over, the Party responsible for such circumstances is responsible for the reasonable labor charges of the other Party. Delays caused by the customer are the responsibility of MFS. In addition, if MFS has

ordered INP as a part of the Unbundled Loop installation, USWC will coordinate implementation of INP with the Unbundled Loop installation; provided, separate INP installation charges will apply.

x. MFS and USWC will work cooperatively to develop forecasts for Unbundled Loop service. USWC requests an eighteen month forecast of Unbundled Loop service. The forecast will include the specific serving Wire Center that will be requested, plus the specific quantity of each service desired. The forecast will be updated quarterly, and will be treated as MFS confidential information.

f. Appendix A contains the rate information for Unbundled Loops.

g. If applicable, the New Interconnection/Unbundled Element Request Process will apply as detailed in Section XXIII of this Agreement.

h. For issues regarding Construction Charges, see Section XXIX of this Agreement.

5. Local Switching Elements

The switching network element includes facilities that are associated with the line (e.g., the line card), facilities that are involved with switching the call, and facilities used for custom routing. USWC will provide the local switching element to MFS pursuant to the Network Interconnection/Unbundled Element Request Process described in Section XXIII herein.

6. Network Interface Device (NID)

a. Service Description.

A device wired between a telephone protector and the inside wiring to isolate the customer's equipment from the network at the subscriber's premises. It is a device for the termination of inside wire that is available in single and multiple pair configurations.

b. MFS may connect its loops, via its own NID, to the USWC NID.

c. Any costs associated with MFS connecting its NID to USWC's NID, will be the responsibility of MFS.

d. Connecting MFS's loop directly to the USWC NID is prohibited.

e. If MFS purchases an unbundled loop, MFS may provide its own NID or have USWC provide the NID.

f. The price for access to the NID will be provided on a case-by-case basis.

7. Additional Unbundled Elements

USWC shall provide nondiscriminatory access to, and where appropriate, development of additional unbundled network elements not covered in this Agreement in response to specific requests therefor, pursuant to the New Interconnection/Unbundled Element Request Process detailed in Section XXIII of this Agreement.

XXXII. SERVICE STANDARDS

A. Definitions

When used in this Section, the following terms shall have the meanings indicated.

1. "Specified Performance Commitment" means the commitment by USWC to meet the Performance Criteria for any Specified Activity during the Specified Review Period.

2. "Specified Activity" means any of the following activities:

   a. The installation by USWC of Unbundled Loops for MFS ("Unbundled Loop Installation");

   b. USWC's provision of Interim Number Portability ("INP Installation") to MFS;

   c. The repair of USWC service provided to MFS ("Out of Service Repairs"); or

   d. The installation by USWC of interconnection trunks for the mutual exchange of local exchange traffic with MFS ("LIS Trunk Installation")

3. "Performance Criteria" means, with respect to a Specified Review Period (i.e., a calendar month or quarter), the performance by USWC for the specified activities for MFS will meet or exceed the average performance by USWC for the total universe of specified activities.

B. Failure to Meet the Performance Criteria. If during a Specified Review Period, USWC fails to meet the performance criteria, USWC will use its best efforts to meet the Performance Criteria for the next Specified Review Period. If USWC fails to meet the performance criteria for two consecutive periods, the Parties agree, in good faith, to attempt to resolve such issues through negotiation or non-binding arbitration. This paragraph shall not be construed to waive either Party's right to seek legal or regulatory intervention as provided by state or federal law. MFS may seek regulatory or other legal relief including requests for specific performance of USWC's obligations under this Agreement.

C. Limitations. USWC's failure to meet or exceed and of the Performance Criteria can not be as a result, directly or indirectly, of a Delaying Event. A "Delaying Event" means (a) a failure by MFS to perform any of its obligations set forth in this Agreement , (b) any delay, act or failure to act by a Customer, agent of subcontractor of MFS or (c) any Force Majeure Event. If a Delaying Event prevents USWC from performing a Specified Activity, then such Specified Activity shall be excluded from the calculation of USWC's compliance with the Performance Criteria.

D. Records. USWC shall maintain complete and accurate records, for the Specified Review Period of its performance under this Agreement for each Specified Activity and its compliance with the Performance Criteria. USWC shall provide to MFS such records in a self-reporting format. The parties agree that such records shall be deemed "Proprietary Information".

XXXIII. IMPLEMENTATION SCHEDULE

A. Within 3 months from the date of final approval of this Agreement, the Parties agree to make a good faith effort to complete each of the following interconnection arrangements:

1. Two-way trunk groups, as listed in Section VI, Paragraph G(2) herein, necessary for the mutual exchange of traffic.

2. E-911 Trunking and database access;

3. SS7 Interconnection and Certification;

4. Directory Listings Arrangements and Directory Assistance Interconnection;

5. Access to Unbundled Loops in at least one wire center;

6. Completion of Physical Collocation arrangements in at least one USWC wire center.

7. Completion of inter-carrier billing arrangements necessary for the joint provision of switched access services and for reciprocal traffic exchange.

B. The Parties have agreed to commence discussion of these and other implementation issues by November 1, 1996 to facilitate the above implementation schedule.

XXXIV. MISCELLANEOUS TERMS

A. General Provisions

1. Each Party shall use its best efforts to comply with the Implementation Schedule.

2. Each Party is individually responsible to provide facilities within its network which are necessary for routing, transporting, measuring, and billing traffic from the other Party's network and for delivering such traffic to the other Party's network in the standard format compatible with MFS' network and to terminate the traffic it receives in that standard format or the proper address on its network. Such facility shall be designed based upon the description and forecasts provided under this Agreement. The Parties are each solely responsible for participation in and compliance with national network plans, including the National Network Security Plan and the Emergency Preparedness Plan.

3. Neither Party shall use any service related to or use any of the services provided in this Agreement in any manner that interferes with other persons in the use of their service, prevents other persons from using their service, or otherwise impairs the quality of service to other carriers or to either Party's Customers, and each Party may discontinue or refuse service if the other Party violates this provision Upon such violation, either Party shall provide the other Party notice of such violation, if practicable, at the earliest practicable time.

4. Each Party is solely responsible for the services it provides to its Customers and to other Telecommunications Carriers.

5. The parties shall work cooperatively to minimize fraud associated with third-number billed calls, calling card calls, and any other services related to this Agreement.

B. Most Favored Nation Terms and Treatment

The parties agree that the provisions of Section 252(i) of the Act shall apply, including state and federal interpretive regulations in effect from time to time.

C. Letter of Authorization

Where so indicated in specific sections of this Agreement, MFS is responsible to have a Letter of Authorization. MFS is solely responsible to obtain authorization from its end user for the handling of the disconnection of the end user's service with USWC, the provision of service by MFS, and the provision of Unbundled Loops and all other ancillary services. Should a dispute or discrepancy arise regarding the authority of MFS to act on behalf of the end user, MFS is responsible for providing written evidence of its authority to USWC.

D. Payment

1. Amounts payable under this Agreement are due and payable within thirty (30) days after the date of invoice.

2. Unless otherwise specified, any amount due and not paid by the due date stated above shall be subject to a late charge equal to either i) 0.03 percent per day compounded daily for the number of calendar days from the payment due date to and including, the date of payment, that would result in an annual percentage rate of 12% or ii) the highest lawful rate, whichever is less. If late payment charges for services are not permitted by local jurisdiction, this provision shall not apply.

E. Taxes

Each party purchasing services hereunder shall pay or otherwise be responsible for all federal, state, or local sales, use, excise, gross receipts, transaction or similar taxes, fees or surcharges levied against or upon such purchasing Party (or the providing Party when such providing Party is permitted to pass along to the purchasing Party such taxes, fees or surcharges), except for any tax on either Party's corporate existence, status or income. Whenever possible, these amounts shall be billed as a separate item on the invoice. To the extent a sale is claimed to be for resale tax exemption, the purchasing Party shall furnish the providing Party a proper resale tax exemption certificate as authorized or required by statute or regulation by the jurisdiction providing said resale tax exemption. Failure to timely provide said resale tax exemption certificate will result in no exemption being available to the purchasing Party.

F. Intellectual Property

1. Each Party hereby grants to the other Party the limited, personal and nonexclusive right and license to use its patents, copyrights and trade secrets but only to the extent necessary to implement this Agreement or specifically required by the then applicable federal and state rules and regulations relating to interconnection and access to telecommunications facilities and services, and for no other purposes. Nothing in this Agreement shall be construed as the grant to the other Party of any rights or licenses to trademarks.

2. The rights and licenses under Section F. 1. above are granted "AS IS" and the other Party's exercise of any such right and license shall be at the sole and exclusive risk of the other Party. Neither Party shall have any obligation to defend, indemnify or hold harmless, or acquire any license or right for the benefit of, or owe any other obligation or have any liability to, the other based on or arising from any claim, demand, or proceeding (hereinafter "claim") by any third party alleging or asserting that the use of any circuit, apparatus, or system, or the use of any

software, or the performance of any service or method, or the provision of any facilities by either Party under this Agreement constitutes infringement, or misuse or misappropriation of any patent, copyright, trade secret, or any other proprietary or intellectual property right of any third party.

3. MFS shall not, without the express written permission of USWC, state or imply that; 1) MFS is connected, or in any way affiliated with USWC or its affiliates, 2) MFS is part of a joint business association or any similar arrangement with USWC or its affiliates, 3) USWC and its affiliates are in any way sponsoring, endorsing or certifying MFS and its goods and services, or 4) with respect to MFS advertising or promotional activities or materials, that the resold goods and services are in any way associated with or originated from USWC or any of its affiliates. Nothing in this paragraph shall prevent MFS from truthfully describing the network elements it uses to provide service to its customers.

G. Severability

The Parties recognize that the FCC is promulgating rules addressing issues contained in this Agreement. In the event that any one or more of the provisions contained herein shall for any reason be held to be unenforceable in any respect under law or regulation, the parties will negotiate in good faith for replacement language. If replacement language cannot be agreed upon, either party may seek regulatory intervention, including negotiations pursuant to Sections 251 and 252 of the Act.

H. Responsibility for Environmental Contamination.

Neither Party shall be liable to the other for any costs whatsoever resulting from the presence or Release of any Environmental Hazard that either Party did not introduce to the affected Work Location. Both Parties shall defend and hold harmless the other, its officers, directors and employees from and against any losses, damages, claims, demands, suits, liabilities, fines, penalties and expenses (including reasonable attorneys' fees) that arise out of or result from (i) any Environmental Hazard that the indemnifying party, its contractors or agents introduce to the Work Locations or (ii) the presence or Release of any Environmental Hazard for which the indemnifying party is responsible under Applicable Law.

I. Responsibility of Each Party

Each Party is an independent contractor, and has and hereby retains the right to exercise full control of and supervision over its own performance of its obligations under this Agreement and retains full control over the employment, direction, compensation and discharge of all employees assisting in the performance of such obligations. Each Party will be solely responsible for all matters relating to payment of such employees, including compliance with social security taxes, withholding taxes and all other regulations governing such

matters. Each Party will be solely responsible for proper handling, storage, transport and disposal at its own expense of all (i) substances or materials that it or its contractors or agents bring to, create or assume control over at work locations or, (ii) waste resulting therefrom or otherwise generated in connection with its or its contractors' or agents' activities at the work locations. Subject to the limitations on liability and except as otherwise provided in this Agreement, each Party shall be responsible for (i) its own acts and performance of all obligations imposed by applicable law in connection with its activities, legal status and property, real or personal and, (ii) the acts of its own affiliates, employees, agents and contractors during the performance of that Party's obligations hereunder.

J. Referenced Documents

All references to Sections, Exhibits, and Schedules shall be deemed to be references to Sections of, and Exhibits and Schedules to, this Agreement unless the context shall otherwise require. Whenever any provision of this Agreement refers to a technical reference, technical publication, MFS practice, USWC practice, any publication of telecommunications industry administrative or technical standards, or any other document specifically incorporated into this agreement, it will be deemed to be a reference to the most recent version or edition (including any amendments, supplements, addenda, or successors) or such document that is in effect, and will include the most recent version or edition (including any amendments, supplements, addenda, or successors) or each document incorporated by reference in such a technical reference, technical publication, MFS practice, USWC practice, or publication of industry standards (unless MFS elects otherwise). Should there by any inconsistency between or among publications or standards, MFS shall elect which requirement shall apply.

K. Publicity and Advertising

Neither party shall publish or use any advertising, sales promotions or other publicity materials that use the other party's logo, trademarks or service marks without the prior written approval of the other party.

L. Executed in Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original; but such counterparts shall together constitute one and the same instrument.

M. Headings of No Force or Effect

The headings of Articles and Sections of this Agreement are for convenience of reference only, and shall in no way define, modify or restrict the meaning or interpretation of the terms or provisions of this Agreement.

N. Entire Agreement

This Agreement constitutes the entire agreement between the Parties and supersedes all prior oral or written agreements, representations, statements, negotiations, understandings, proposals and undertakings with respect to the subject matter hereof.

O. Joint Work Product.

This Agreement is the joint work product of the Parties and has been negotiated by the Parties and their respective counsel and shall be fairly interpreted in accordance with its terms and, in the event of any ambiguities, no inferences shall be drawn against either Party.

P. Disclaimer of Agency

Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party Except as otherwise expressly provided in this Agreement, no Party undertakes to perform any obligation of the other Party whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

Q. Survival

The Parties' obligations under this Agreement which by their nature are intended to continue beyond the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.

R. Effective Date

This Agreement shall become effective pursuant to Sections 251 and 252 of the Act.

S. Amendment of Agreement

MFS and USWC may mutually agree to amend this Agreement in writing. Since it is possible that amendments to this Agreement may be needed to fully satisfy the purposes and objectives of this Agreement, the Parties agree to work cooperatively, promptly and in good faith to negotiate and implement any such additions, changes and corrections to this Agreement.

T. Indemnity

1. Each of the Parties agrees to release, indemnify, defend and hold harmless the other Party and each of its officers, directors, employees and agents (each an "Indemnitee") from and against and in respect of any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement of any nature or kind, known or unknown, liquidated or unliquidated including, but not limited to, costs and attorneys' fees, whether suffered, made, instituted, or asserted by any other party or person, for invasion of privacy, personal injury to or death of any person or persons, or for loss, damage to, or destruction of property, whether or not owned by others, resulting from the indemnifying Party's performance, breach of Applicable Law, or status of its employees, agents and subcontractors; or for failure to perform under this Agreement, regardless of the form of action.

2. The indemnification provided herein shall be conditioned upon:

   a. The indemnified Party shall promptly notify the indemnifying Party of any action taken against the indemnified Party relating to the indemnification. Failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of any liability that the Indemnifying Party might have, except to the extent that such failure prejudices the Indemnifying Party's ability to defend such claim.

   b. The indemnifying Party shall have sole authority to defend any such action, including the selection of legal counsel, and the indemnified Party may engage separate legal counsel only at its sole cost and expense.

   c. In no event shall the indemnifying Party settle or consent to any judgment pertaining to any such action without the prior written consent of the indemnified Party.

U. Limitation of Liability

1. Except as otherwise provided in the indemnity section, no Party shall be liable to the other Party for any Loss, defect or equipment failure caused by the conduct of the other Party, the other Party's agents, servants, contractors or others acting in aid or concert with the other Party.

2. Except for Losses alleged or made by a Customer of either Party, in the case of any Loss arising from the negligence or willful misconduct of both Parties, each Party shall bear, and its obligations under this Section shall be limited to, that portion (as mutually agreed to by the Parties) of the resulting expense caused by its (including that of its agents, servants,

contractors or others acting in aid or concert with it) negligence or willful misconduct.

3. Except for indemnity obligations, each Party's liability to the other Party for any Loss relating to or arising out of any negligent act or omission in its performance of this Agreement, whether in contract or in tort, shall be limited to the total amount that is or would have been charged to the other Party by such negligent or breaching Party for the service(s) or function(s) not performed or improperly performed.

4. In no event shall either Party have any liability whatsoever to the other Party for any indirect, special, consequential, incidental or punitive damages, including but not limited to loss of anticipated profits or revenue or other economic loss in connection with or arising from anything said, omitted or done hereunder (collectively, "Consequential Damages"), even if the other Party has been advised of the possibility of such damages; provided, that the foregoing shall not limit a Party's obligation to indemnify, defend and hold the other Party harmless against any amounts payable to a third party, including any losses, costs, fines, penalties, criminal or civil judgments or settlements, expenses (including attorneys' fees) and Consequential Damages of such third party. Nothing contained in this section shall limit either Party's liability to the other for (I) willful or intentional misconduct (including gross negligence); (ii) bodily injury, death or damage to tangible real or tangible personal property proximately caused by such party's negligent act or omission or that of their respective agents, subcontractors or employees nor shall anything contained in this section limit the Parties' indemnification obligations, as specified below.

V. Term of Agreement

This Agreement shall be effective for a period of 2 1/2 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.

W. Controlling Law

This Agreement was negotiated by the Parties in accordance with the terms of the Act and the laws of the state where service is provided hereunder. It shall be interpreted solely in accordance with the terms of the Act and the applicable state law in the state where the service is provided.

X. Cancellation Charges

Except as provided pursuant to a Network Element Network Interconnection and Unbundled Element Request, or as otherwise provided in any applicable tariff or contract referenced herein, no cancellation charges shall apply.

Y. Regulatory Approval

The Parties understand and agree that this Agreement will be filed with the Commission and may thereafter be filed with the FCC. In the event the Commission rejects any portion of this Agreement, the parties agree to meet and negotiate in good faith to arrive at a mutually acceptable modification to the rejected portion.

Z. Compliance

Each party shall comply with all applicable federal, state, and local laws, rules and regulations applicable to its performance under this Agreement.

AA. Compliance with the Communications Law Enforcement Act of 1994 ("CALEA")

Each Party represents and warrants that any equipment, facilities or services provided to the other Party under this Agreement comply with CALEA. Each party shall indemnify and hold the other Party harmless from any and all penalties imposed upon the other Party for such noncompliance and shall at the non-compliant Party's sole cost and expense, modify or replace any equipment, facilities or services provided to the other Party under this Agreement to ensure that such equipment, facilities and services fully comply with CALEA.

BB. Independent Contractor

Each party shall perform services hereunder as an independent contractor and nothing herein shall be construed as creating any other relationship between the Parties. Each party and each Party's contractor shall be solely responsible for the withholding or payment of all applicable federal, state and local income taxes, social security taxes and other payroll taxes with respect to their employees, as well as any taxes, contributions or other obligations imposed by applicable state unemployment or workers' compensation acts. Each party has sole authority and responsibility to hire, fire and otherwise control its employees.

CC. Force Majeure

Neither party shall be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence including, without limitation, acts of nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work

stoppages, equipment failure, power blackouts, volcanic action, other major environmental disturbances, unusually sever weather conditions, inability to secure products or services of other persons or transportation facilities or acts or omissions of transportation carriers (collectively, a "Force Majeure Event") In the event of a labor dispute or strike the Parties agree to provide service to each other at a level equivalent to the level they provide themselves.

DD. Dispute Resolution

The Parties agree, in good faith, to attempt to resolve any claim, controversy or dispute between the Parties, their agents, employees, officers, directors or affiliated agents ("Dispute") through negotiation or non-binding arbitration. This paragraph shall not be construed to waive the Parties' rights to seek legal or regulatory intervention as provided by state or federal law.

EE. Commission Decision

This Agreement shall at all times be subject to such review by the Commission or FCC as permitted by the Act. If any such review renders the Agreement inoperable or creates any ambiguity or requirement for further amendment to the Agreement, the Parties will negotiate in good faith to agree upon any necessary amendments to the Agreement.

FF. Nondisclosure

1. All information, including but not limited to specifications, microfilm, photocopies, magnetic disks, magnetic tapes, drawings, sketches, models, samples, tools, technical information, data, employee records, maps, financial reports, and market data, (i) furnished by one Party to the other Party dealing with customer specific, facility specific, or usage specific information, other than customer information communicated for the purpose of publication of directory database inclusion, or (ii) in written, graphic, electromagnetic, or other tangible form and marked at the time of delivery as "Confidential" or "Proprietary", or (iii) communicated orally and declared to the receiving Party at the time of delivery, or by written notice given to the receiving Party within ten (10) days after delivery, to be "Confidential" or "Proprietary" (collectively referred to as "Proprietary Information"), shall remain the property of the disclosing Party. A Party who receives Proprietary Information via an oral communication may request written confirmation that the material is Proprietary Information. A Party who delivers Proprietary Information via an oral communication may request written confirmation that the Party receiving the information understands that the material is Proprietary Information.

2. Upon request by the disclosing Party, the receiving Party shall return all tangible copies of Proprietary Information, whether written, graphic or

otherwise, except that the receiving Party may retain one copy for archival purposes.

3. Each Party shall keep all of the other Party's Proprietary Information confidential and shall use the other Party's Proprietary Information only in connection with this Agreement. Neither Party shall use the other Party's Proprietary Information for any other purpose except upon such terms and conditions as may be agreed upon between the Parties in writing.

4. Unless otherwise agreed, the obligations of confidentiality and non-use set forth in this Agreement do not apply to such Proprietary Information as:

   a. was at the time of receipt already known to the receiving Party free of any obligation to keep it confidential evidenced by written records prepared prior to delivery by the disclosing Party; or

   b. is or becomes publicly known through no wrongful act of the receiving Party; or

   c. is rightfully received from a third person having no direct or indirect secrecy or confidentiality obligation to the disclosing Party with respect to such information; or

   d. is independently developed by an employee, agent, or contractor of the receiving Party which individual is not involved in any manner with the provision of services pursuant to the Agreement and does not have any direct or indirect access to the Proprietary Information; or

   e. is disclosed to a third person by the disclosing Party without similar restrictions on such third person's rights; or

   f. is approved for release by written authorization of the disclosing Party; or

   g. is required to be made public by the receiving Party pursuant to applicable law or regulation provided that the receiving Party shall give sufficient notice of the requirement to the disclosing Party to enable the disclosing Party to seek protective orders.

5. Effective Date Of This Section. Notwithstanding any other provision of this Agreement, the Proprietary Information provisions of this Agreement shall apply to all information furnished by either Party to the other in furtherance of the purpose of this Agreement, even if furnished before the date of this Agreement.

GG. Notices

Any notices required by or concerning this Agreement shall be sent to the Parties at the addresses shown below:

USWC
Mark Reynolds, Director Interconnection Services
1600 7th Ave, Room 3002
Seattle, WA 98191

MFS
Andrew Lipman
MFS Communications
3000 K Street N.W.
Suite 300
Washington D.C. 20007

Eric Artman
MFS Communications
185 Berry Street
Suite 5100
San Francisco, CA 94107

Each Party shall inform the other of any changes in the above addresses.

HH. Assignment

Neither Party may assign or transfer (whether by operation of law or otherwise) this Agreement (or any rights or obligations hereunder) to a third party without the prior written consent of the other Party provided that each Party may assign this Agreement to a corporate affiliate or an entity under its common control or an entity acquiring all or substantially all of its assets or equity by providing prior written notice to the other Party of such assignment or transfer. Any attempted assignment or transfer that is not permitted is void ab initio. Without limiting the generality of the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties' respective successors and assigns.

II. Warranties

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE PARTIES AGREE THAT NEITHER PARTY HAS MADE, AND THAT THERE DOES NOT EXIST, ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

JJ. Default

If either Party defaults in the payment of any amount due hereunder, or if either Party violates any other provision of this Agreement, and such default or violation shall continue for thirty (30) days after written notice thereof, the other Party may seek legal and/or regulatory relief. The failure of either Party to enforce any of the provisions of this Agreement or the waiver thereof in any instance shall not be construed as a general waiver or relinquishment on its part of any such provision, but the same shall, nevertheless, be and remain in full force and effect.

KK. No Third Party Beneficiaries

Except as may be specifically set forth in this Agreement, this Agreement does not provide and shall not be construed to provide third parties with any remedy, claim, liability, reimbursement, cause of action, or other privilege.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized representatives.

MFS INTELENET, INC.	**U S WEST Communications, Inc.**
_____	_____
Signature	Signature*
_____	SCOTT MCCLELLAN
Name Printed/Typed	Name Printed/Typed
_____	VICE PRESIDENT — WASHINGTON
Title	Title
_____	DECEMBER 9, 1996
Date	Date

* Signed as ordered by the arbitrator in Docket UT-960323. Signature does not indicate agreement with all aspects of the arbitrator's decision, nor does it waive any of U S WEST's rights to seek judicial review of all or part of the agreement, or to reform the agreement as the result of successful judicial review.

JJ. Default

If either Party defaults in the payment of any amount due hereunder, or if either Party violates any other provision of this Agreement, and such default or violation shall continue for thirty (30) days after written notice thereof, the other Party may seek legal and/or regulatory relief. The failure of either Party to enforce any of the provisions of this Agreement or the waiver thereof in any instance shall not be construed as a general waiver or relinquishment on its part of any such provision, but the same shall, nevertheless, be and remain in full force and effect.

KK. No Third Party Beneficiaries

Except as may be specifically set forth in this Agreement, this Agreement does not provide and shall not be construed to provide third parties with any remedy, claim, liability, reimbursement, cause of action, or other privilege.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized representatives.

MFS INTELENET, INC.

on behalf of MFS Communications Company, Inc., Party to WUTC Docket No. UT-960323 and on behalf of MFS Intelenet of Washington, Inc., the subsidiary authorized to provide telecommunications service in Washington.

Signature

Eric A. Artman

Name Printed/Typed

Director of Regulatory Affairs

Title

6 December 1996

Date

U S WEST Communications, Inc.

Signature

Name Printed/Typed

Title

Date

960323

APPENDIX A
Rates and Charges
Washington

INTERCONNECTION - LOCAL EXCHANGE

Local Call Termination	**Agreed Price**
End Office - Per Minute of Use	$0.003141
Tandem Switch - Per Minute of Use (Note 1) (includes End Office Call Termination and Tandem Transport)	$0.005416

Note 1: The above local tandem call termination rate includes tandem transmission, based on an assumed transport mileage of 10 miles.
Should the average tandem transmission mileage experienced by the Parties exceed 10 miles, the Parties agree to adjust the tandem call termination rate based on the tandem transmission rates set forth below.

Entrance Facility	**Agreed Price Recurring**	**Agreed Price Nonrecurring**
DS1, Electrical	$99.78	$583.92
DS3, Electrical	$404.24	$668.95

Direct Trunked Transport	**Agreed Price Fixed**	**Agreed Price Per Mile**
DS1 - 0 Miles	None	None
DS1 - Over 0 to 8	$41.72	$0.67
DS1 - Over 8 to 25	$41.72	$0.84
DS1 - Over 25 to 50	$41.73	$2.97
DS1 - Over 50	$41.73	$3.49
DS3 - 0 Miles	None	None
DS3 - Over 0 to 8	$283.30	$13.83
DS3 - Over 8 to 25	$284.17	$15.03
DS3 - Over 25 to 50	$291.31	$39.19
DS3 - Over 50	$293.91	$44.74

Multiplexing, per arrangement	**Agreed Price Recurring**	**Agreed Price Nonrecurring**
DS3 to DS1	$218.58	$418.45

Local Transit Traffic Rate	**Agreed Price**
Tandem Switching, per MOU	$0.001794

Tandem Transmission	**Agreed Price Fixed**	**Agreed Price Per Mile**
0 Mile	None	None
Over 0 - 8 Miles	$0.000411	$0.000009
Over 8 - 25 Miles	$0.000411	$0.000007
Over 25 - 50 Miles	$0.000408	$0.000008
Over 50 Miles	$0.000409	$0.000015

INTERCONNECTION - EXCHANGE ACCESS	Agreed Price
Call Termination, Transport, and Transit	Per Switched Access Tariff

COMMON CHANNEL SIGNALLING ACCESS SERVICE

	Agreed Price Recurring	Agreed Price Nonrecurring
Entrance Facility		
DS1	$99.78	$563.92
DS3	$404.24	$668.95

	Agreed Price Fixed	Agreed Price Per Mile
Direct Link Transport		
DS0 - 0 Miles	None	None
DS0 - Over 0 to 8	$20.89	$0.13
DS0 - Over 8 to 25	$20.88	$0.10
DS0 - Over 25 to 50	$20.88	$0.10
DS0 - Over 50	$20.89	$0.17
DS1 - 0 Miles	None	None
DS1 - Over 0 to 8	$41.72	$0.67
DS1 - Over 8 to 25	$41.72	$0.84
DS1 - Over 25 to 50	$41.73	$2.97
DS1 - Over 50	$41.73	$3.49

	Agreed Price Fixed	Agreed Price Per Mile
Direct Link Transport		
DS3 - 0 Miles	None	None
DS3 - Over 0 to 8	$283.30	$13.83
DS3 - Over 8 to 25	$284.17	$15.03
DS3 - Over 25 to 50	$291.31	$39.19
DS3 - Over 50	$293.91	$44.74

	Agreed Price Recurring	Agreed Price Nonrecurring
CCS Link -- First Link	None	$504.68
CCS Link -- Each additional Link	None	$72.42
STP Port -- Per Port	$208.57	None

	Agreed Price Recurring	Agreed Price Nonrecurring
Multiplexing		
DS1 to DS0	$221.08	None
DS3 to DS1	$218.58	None

PHYSICAL AND VIRTUAL COLLOCATION

	Arbitrated Price	
Common Elements	**Recurring**	**Nonrecurring**
Quote Preparation Fee	None	$2,437.30
Entrance Facility - Per cable (Note 3)	$2.07	$1,307.45
2-wire DS0 EICT	$1.41	$339.61 (Note 4)
4-wire DS0 EICT	$1.79	$339.61 (Note 4)
DS1 EICT	$9.12	$405.02
DS3 EICT	$31.93	$433.23
DS1 EICT - regeneration (Note 5)	$14.38	
DS3 EICT - regeneration (Note 5)	$94.24	

	Agreed Price Recurring	**Agreed Price Nonrecurring**
Cable Splicing		
Per setup	None	$103.59
Per Fiber Spliced	None	$12.95
48 Volt Power, per ampere, per month	$13.45	None
48 Volt Power Cable		
20 Ampere Capacity - Recurring	$0.15	$68.37
40 Ampere Capacity - Recurring	$0.20	$92.71
60 Ampere Capacity - Recurring	$0.22	$104.42
Equipment Bay, Per Shelf	$8.58	None

	Agreed Price Regular Hours	**Agreed Price After Hours**
Inspector per 1/2 Hour	$28.62	$37.02
Training per 1/2 Hour	$25.36	None
Engineering per 1/2 Hour	$24.73	$33.09
Installation per 1/2 Hour	$28.62	$37.20
Maintenance per 1/2 Hour	$25.36	$33.73

Physical Collocation (Note 6)	**Agreed Price Recurring**	**Agreed Price Nonrecurring**
Cage/Hard Wall Enclosure	ICB	ICB
Rent (w/ Maintenance) - per square foot - Zone 1	$2.75	None
Rent (w/ Maintenance) - per square foot - Zone 2	$2.26	None
Rent (w/ Maintenance) - per square foot - Zone 3	$2.06	None

Note 3: Pricing is pursuant to Arbitrator's Decision in Docket UT-960323.

Note 4: Pursuant to Arbitrator's Decision in Docket UT-960323, DS0 EICT NRC does not apply to unbundled loops where a separate unbundled loop NRC applies.

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Note 5: If required. No NRC applies to regeneration ordered concurrently with an associated EICT element.

Note 6: Zones per NECA-4 Tariff

ANCILLARY SERVICES

	Agreed Price
Directory Assistance	
Price per Call -- Facilities-Based Providers	$0.34
Listings	
Primary Listings, Directory Assistance, White Pages	No Charge
E911	
LEC and MFS recover costs from PSAP	No Charge

	Agreed Cost Recurring
Interim Number Portability	
Without Transport	
Per Number Ported - First Path	$4.25
Per Number Ported - Additional Path	$3.02
With Transport	
Per Number Ported - First Path	$8.73
Per Number Ported - Additional Path	$7.50

	Agreed Cost Nonrecurring
Additional Charges	
Service Establishment, per switch, per route	$43.80
Service Establishment - additional number ported or changes to existing numbers, per number ported	$9.49
Additional and Consecutive Numbers -- additional number ported on same account name and consecutive numbers, per number ported	$7.05

	Agreed Price
Assignment of Numbers	
Assignments per industry guidelines	No Charge
Busy Line Verification	
Per Call	$0.72
Busy Line Interrupt	
Per Call	$0.87

	Arbitrated Price	
	Recurring	Nonrecurring
Unbundled Loops (Note 7)		
State-wide per Loop	$13.37	
Without testing, first loop per service order		$96.30
With Basic Testing, first loop per service order		$153.86
With Basic Testing at Designated Time, first loop per service order		$206.02
Without testing, additional loop per service order		$20.00
With Basic Testing, additional loop per service order		$30.00
With Basic Testing at Designated Time, additional loop per service order		$30.00

Note 7: Price of Unbundled Loops and additional Loops is ordered pursuant to Arbitrator's Decision in Docket UT-960323

APPENDIX A

COMMISSION IMPOSED RESALE
WHOLESALE RATES
WASHINGTON

U S WEST need not make the following services available for Resale:

Enhanced services including Voice Mail

U S WEST shall make the following services available for Resale:

All telecommunications services.

U S WEST shall make all services, except Switched Access, Special Access, and Residence Exchange services, available for Resale at a 21% discount rate, as ordered by the Commission (i.e. Wholesale price is 79% of Retail price, where Retail is the offered tariff price. Where USWC offers services under a volume discount, MFS may purchase such services at the volume discount rate or the 21% Resale discount rate, whichever provides a greater discount.

APPENDIX A

RESALE
NONRECURRING CHARGES
WASHINGTON

Description	Arbitrated Price
Customer Transfer Charge	
Business, per end user	$56.60
Residence, per end user	$54.13
ISDN, per end user	$57.15

APPENDIX C

PHYSICAL COLLOCATION AGREEMENT

BETWEEN

US WEST COMMUNICATIONS

AND

MFS COMMUNICATIONS COMPANY, INC.

TABLE OF ARTICLES

PHYSICAL COLLOCATION AGREEMENT

THIS PHYSICAL COLLOCATION AGREEMENT ("Agreement") is made this _____ day of _____, 19___ by and between US WEST COMMUNICATIONS, a Colorado corporation ("USWC"), and MFS COMMUNICATIONS COMPANY, INC., a Delaware corporation, its successors and assigns ("Interconnector").

WITNESSETH

WHEREAS, USWC is an incumbent local exchange carrier having a statutory duty to provide for "physical collocation" of "equipment necessary for interconnection or access to unbundled network elements at its Premises, U.S.C. 251(c)(6); and

WHEREAS, the Interconnector wishes to physically locate certain of its equipment within the Premises (as defined herein) and connect with USWC; and

NOW THEREFORE, in consideration of the mutual agreements and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, USWC and the Interconnector (the "parties") agree as follows:

ARTICLE I - PREMISES

1.1 Right to Use. Subject to this Agreement, USWC grants to Interconnector the right to use the premises described on Exhibit C ("Premises"), attached and incorporated herein, within real property at _____ in the City of _____ , County of _____, State of _____.

1.2 Relocation. Notwithstanding Section 1.1, in the event that it is necessary for the Premises to be moved within the structure in which the Premises is located ("Physical Collocation Site") or to another USWC Physical Collocation Site, at the Interconnector's option, the Interconnector shall move its facilities to the new Premises. The Interconnector shall be responsible for the preparation of the new Premises if such relocation arises from circumstances beyond the reasonable control of USWC, including condemnation or government order or regulation that makes the continued occupancy of the Premises or Physical Collocation Site impossible. Otherwise USWC shall be responsible for any such preparation and shall bear all costs associated with the relocation.

If the Interconnector requests that the Premises be moved within the Physical Collocation Site or to another USWC Physical Collocation Site, USWC shall permit the Interconnector to relocate the Premises, subject to availability of space and associated requirements. The Interconnector shall be responsible for all applicable charges associated with the move, including the reinstallation of its equipment and facilities and the preparation of the new Premises.

In either such event, the new Premises shall be deemed the "Premises" hereunder and the new Physical Collocation Site (where applicable) the "Physical Collocation Site."

1.3 The Premises. USWC agrees, at the Interconnector's sole cost and expense as set forth herein, to prepare the Premises in accordance with working drawings and specifications entitled _____ and dated _____, which documents, marked Exhibit C, are attached and incorporated herein. The preparation shall be arranged by USWC in compliance with all applicable codes, ordinances, resolutions, regulations and laws. In return for the Interconnector's agreement to make the payments required by Section 2.1 hereof, USWC agrees to pursue diligently the preparation of the Premises for use by the Interconnector.

ARTICLE II - EFFECTIVENESS AND REGULATORY APPROVAL

2.1 Submission to State Commission. The Agreement is prepared as a component of the Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996, between USWC and MFS Communications Company, Inc. ("Interconnection Agreement"), and the parties intend to submit the Agreement and other elements of the Interconnection Agreement to state commissions for approval under the provisions of 47 U.S.C. § 252. This Agreement is conditioned upon the approval of this Agreement and the Interconnection Agreement. After execution of this Agreement, the parties shall submit it and the applicable Interconnection Agreement to the State commission in the State in which the Premises is located for approval, and shall defend the Agreement and support any reasonable effort to have this Agreement so approved, including the supplying of witnesses and testimony if a hearing is held.

2.2 Failure to Receive Approval. If this Agreement does not receive such unqualified approval, this Agreement shall be void upon written notice of either party to the other after such regulatory action becomes final and unappealable. Thereafter Interconnector may request to begin negotiations again under 47 U.S.C. 251. Alternatively, the parties may both agree to modify this Agreement to receive such approval, but neither shall be required to agree to any modification. Any agreement to modify shall not waive the right of either party to pursue any appeal of the ruling made by any reviewing regulatory commission or to seek arbitration of any of the terms of this Agreement or any of the terms of the Interconnection Agreement.

2.3 Preparation Prior to Regulatory Approval. At the written election of the Interconnector, USWC shall begin preparing the Premises for the Interconnector prior to receiving the approval required by Section 2.1 hereof. Except as specified in the Interconnection Agreement, the evidence of such election shall be the delivery to USWC of a letter requesting that USWC begin preparations, payment of 50 percent of the non-recurring charge for preparing the Premises for use by MFS, and the promise of MFS to pay the balance of the non-recurring charges as provided in this Agreement. Payment to USWC of the remaining non-recurring charges due under this Agreement shall be due one month after the Interconnector's equipment is installed at the Premises, interconnected with USWC and operational as described in Section 3.2 below. Upon such an election, this Agreement shall become effective but only insofar as to be applicable to Premises preparation. If the Agreement does not become fully effective as contemplated by this Article due in any part to USWC not fulfilling its obligation under 2.1 preceding, the Interconnector shall be entitled to a refund of all payments made to USWC for preparation.

ARTICLE III - TERM

3.1 Commencement Date. This Agreement shall be a term agreement, beginning on the "Commencement Date" and ending on a date five years afterwards. The "Commencement Date" shall be the first day after the Interconnector's equipment becomes operational as described in Section 3.2. At the end of the term and unless the parties agree to an extension or a superseding arrangement, this Agreement shall automatically convert to a month-to-month Agreement.

3.2 Occupancy. Unless there are unusual circumstances, USWC will notify the Interconnector that the Premises is ready for occupancy within five (5) days after USWC completes preparations described in Section 2.3 The Interconnector must place operational telecommunications equipment in the Premises and connect with USWC's network within one hundred fifty (150) days after receipt of such notice; provided, however, that such one hundred fifty day period shall not begin until regulatory approval is obtained under Article II and, further, that USWC may extend beyond the one hundred fifty days upon a demonstration by the Interconnector of a best efforts to meet that deadline and circumstances beyond its reasonable control that prevented the Interconnector from meeting that deadline. If the Interconnector fails to do so, this Agreement is terminated on the thirtieth (30^{th}) day after USWC provides to the Interconnector written notice of such failure and the Interconnector does not place operational telecommunications equipment in the Premises and connect with USWC's network by such thirtieth day. In any such event, the Interconnector shall be liable in an amount equal to the unpaid balance of the preparation charges due. For purposes of this Section, the Interconnector's telecommunications equipment is considered to be operational and interconnected when connected to USWC's network for the purpose of providing service.

ARTICLE IV - PREMISES CHARGES

4.1 Monthly Charges. Beginning on the Commencement Date, Interconnector shall pay to USWC monthly fees as specified in Exhibit A.

4.2 Billing. Billing for Monthly Charges shall occur on or about the 25th day of each month, with payment due thirty (30) days from the bill date. USWC may change its billing date practices upon providing ninety (90) days written notice to the Interconnector. Each USWC bill must identify the Premises location by CLLI and/or address and must separately identify any non-contiguous Premises within the Physical Collocation Site. Further, USWC must specify separately for each Premises CLLI and/or address and for any non-contiguous Premises each rate element individually along with the quantity purchased by the Interconnector at that (those) Premises and the individual rate charged for each element along with the dates for which such charges apply. USWC shall promptly adjust Interconnector's account in each instance of misbilling identified and demonstrated by the Interconnector.

4.3 Nonrecurring Charges.

(a) The one-time charge for preparing the Premises for use by the Interconnector as well as all other one-time charges associated with the Interconnector's request shall be exactly as stated in Exhibit B.

(b) USWC will contract for and perform the procurement, construction and preparation activities underlying the Monthly Fees and Nonrecurring Charges, using the same or consistent practices that are used by USWC for other construction and preparation work performed in the Physical Collocation Site and shall make every possible effort to obtain all necessary approvals and permits, where applicable, promptly. USWC will obtain more than one trade subcontractor submission to the extent available when the initial trade subcontractor bid, proposal or quotation associated with an ICB pursuant to Exhibit B exceeds ten-thousand dollars ($10,000.00). It is understood and agreed that any such request for additional subcontractor submissions will likely add to the time necessary to provide physical collocation and, for that reason, Interconnector reserves the right to authorize USWC to forgo such additional bids but will only do so in writing. USWC will permit the Interconnector to inspect all supporting documents for the Monthly Fees and Nonrecurring Charges. Any dispute regarding such USWC charges will be subject to the dispute resolution provisions hereof. Notwithstanding the above, the Interconnector may directly contract with any supplier, vendor, subcontractor, or contractor that USWC approves for such work (including but not limited to the procurement and installation of cages) and may, at Interconnector's election, be solely responsible for any and all payments due to such supplier, vendor, subcontractor or contractor for such procurement, construction and preparation activities. Where Interconnector exercises this right, Interconnector shall pay to USWC only those amounts associated with labor hours of USWC personnel necessary for such USWC personnel to observe and approve such work at the Premises within the Physical Collocation Site.

(c) Nonrecurring Charges associated with the point-of-termination bay shall be applied to the Interconnector by USWC only where the Interconnector requests in writing that USWC supply such point-of-termination bay. Otherwise, the Interconnector shall be responsible for purchasing such point-of-termination bays and for arranging their installation by a vendor, subcontractor or contractor approved by USWC to perform such work.

4.4 Preparation. USWC will begin preparation on execution of this Agreement and upon receipt of written notice from Interconnector as described in Section 2.3.

4.5 Pre-Preparation Access. USWC shall permit the Interconnector to have access to the Premises for the purpose of inspection once physical collocation site preparation activities have begun. Interconnector agrees to limit the number of such inspections to three per Premises except where such inspection exposes a non-conformance with the Interconnector's requirements as stated in its initial request or this Agreement.

4.6 Breach Prior to Commencement Date. If the Interconnector materially breaches this Agreement by purporting to terminate this Agreement after USWC has begun preparation of the Premises then, in addition to any other remedies that USWC might have, the Interconnector shall be liable in the amount equal to the non-recoverable costs less estimated net salvage. Non-recoverable costs include the non-recoverable cost of equipment and material ordered, provided or used; subcontractor charges paid by USWC for work performed

on behalf of Interconnector; the non-recoverable cost of installation and removal, including the costs of equipment and material ordered, provided and used; labor for work done on behalf of Interconnector for preparation; transportation and any other associated costs. USWC shall provide Interconnector with a detailed invoice showing the costs it incurred associated with preparation. Further, at the Interconnector's election, USWC shall provide to the Interconnector all materials that it determined to be unsalvageable. Should the costs incurred by USWC be used for the provision of a collocation arrangement for a third party, such costs shall be refunded to the Interconnector.

4.7 Space Preparation Fee True-Up. For all work performed by USWC and by vendors, subcontractors and contractors hired by USWC in order to prepare the Premises pursuant to the Interconnector's written request and pursuant to 4.3 preceding, USWC shall within ninety (90) days of the completion of the Premises preparation work perform a true-up of all USWC, vendor, subcontractor and contractor bill amounts associated with any ICB pricing performed pursuant to Exhibit B. If the resulting total cost is less than that paid by the Interconnector, then USWC shall within thirty (30) days refund to the Interconnector the difference between the actual cost and the payment that the Interconnector had previously submitted to USWC. Alternatively, if the total cost exceeds that previously paid by the Interconnector, then the Interconnector shall submit payment to USWC for the difference within thirty (30) days for its receipt of the bill for such an amount. Nothing in either case releases USWC from its obligation to make best-faith efforts to achieve the lowest-available cost for the preparation work that it proves is necessary or releases USWC from its obligation to allow the Interconnector to inspect such documents pursuant to 4.3 preceding.

ARTICLE V - INTERCONNECTION CHARGES

Charges for interconnection and collocation shall be set forth in Exhibits A and B.

ARTICLE VI - DEMARCATION POINT

6.1 Cable Entrances. The Interconnector shall use a dielectric fiber optic cable as a transmission medium to the Premises, or other transmission media as it determines is necessary in order to provide services for which it has legal and regulatory authority. The Interconnector shall be permitted at least two (2) cable entrance routes into the Premises whenever two entrance routes are used by USWC at that Physical Collocation Site.

6.2 Demarcation Point. USWC and the Interconnector shall designate the point(s) of interconnection within the Physical Collocation Site as the point(s) of physical demarcation between the Interconnector's network and USWC's network, with each being responsible for maintenance and other ownership obligations and responsibilities on its side of that demarcation point. USWC and the Interconnector anticipate that the demarcation point will be within the point-of-termination bay which the Interconnector may elect to provide and install pursuant to 4.3 preceding. Where no point of termination bay is elected by the Interconnector, the point(s) of interconnection shall be specified in Exhibit D.

ARTICLE VII - USE OF PREMISES

7.1 Nature of Use. The Premises are to be used by the Interconnector for purposes of locating equipment and facilities within USWC's Physical Collocation Sites to connect with USWC services or facilities and other Interconnectors. USWC shall permit Interconnector to place, maintain and operate on Premises any equipment, pursuant to the FCC's regulations on the types of equipment required to be collocated. Consistent with the nature of the Premises and the environment of the Premises, the Interconnector shall not use the Premises for office, retail, or sales purposes. No signs or marking of any kind by the Interconnector shall be permitted on the Premises or on the grounds surrounding the Premises.

7.2 Administrative Uses. The Interconnector may use the Premises for placement of equipment and facilities only. The Interconnector's employees, agents and contractors shall be permitted access to the Premises at all reasonable times, provided that the Interconnector's employees, agent and contractors comply with USWC's policies and practices pertaining to fire, safety and security. The Interconnector agrees to comply promptly with all laws, ordinances and regulations affecting the use of the Premises. Upon the expiration of the Agreement, the Interconnector shall surrender the Premises to USWC in the same condition as when first occupied by the Interconnector except for ordinary wear and tear.

7.3 Threat to Network or Facilities. Interconnector equipment or operating practices representing a significant demonstrable technical threat to USWC's network or facilities, including the Premises, are strictly prohibited.

7.4 Interference or Impairment. Notwithstanding any other provision hereof, the characteristics and methods of operation of any equipment or facilities placed in the Premises shall not interfere with or impair service over any facilities of USWC or the facilities of any other person or entity located in the Physical Collocation Site; create hazards for or cause damage to those facilities, the Premises, or the Physical Collocation Site; impair the privacy of any communications carried in, from, or through the Physical Collocation Site; or create hazards or cause physical harm to any individual or the public. Any of the foregoing events would be a material breach of this Agreement if, after USWC's submission to Interconnector of written notice of such interference or impairment, Interconnector did not promptly work to eliminate the interference or impairment.

7.5 Interconnection to Others. The Interconnector may directly connect to other Interconnectors' facilities within the Physical Collocation Site. USWC agrees to provide to Interconnector, upon its receipt of the Interconnector's written request, any facilities necessary for such interconnection wherever such facilities exist or can be made available and USWC shall provide any such facilities pursuant to 4.3 preceding and Exhibits A and B. Further, USWC agrees to provide to the Interconnector, upon its receipt of the Interconnector's written request, unbundled network transmission elements at rates specified in Exhibits A and B, and USWC will facilitate interconnection of the Interconnector's collocation equipment to other services offered in USWC's tariffs or other Agreements (e.g., Synchronous Service Transport service). For the purposes of Interconnection to Others, where the other Interconnector's Interconnection Agreement differs from this Agreement, the less restrictive terms and conditions relating to such direct interconnection and the lower charges identified in the two Agreements for such direct interconnection shall apply to both Interconnectors for all Interconnection between those two Interconnectors. Interconnector agrees to continue to pay

to USWC all applicable Monthly Charges for space, power and for all other interconnection circuits at the Premises.

7.6 Personality and its Removal. Subject to the Article, the Interconnector may place or install in or on the Premises such fixtures and equipment as it shall deem desirable for the conduct of business. Personal property, fixtures and equipment placed by the Interconnector in the Premises shall not become a part of the Premises, even if nailed, screwed or otherwise fastened to the Premises, but shall retain their status as personality and may be removed by Interconnector at any time. Any damage caused to the Premises by the removal of such property shall be promptly repaired by Interconnector at its expense.

7.7 Alterations In no case shall the Interconnector or any person purporting to be acting through on or behalf of the Interconnector make any rearrangement, modification, improvement, addition, repair, or other alteration to the Premises or the Physical Collocation Site without the advance written permission and direction of USWC. USWC shall make best efforts to honor any reasonable request for a modification, improvement, addition, repair, or other alteration proposed by the Interconnector, provided that USWC shall have the right to, for reasons that it specifies in writing, reject or modify any such request except as required by state or federal regulators. The cost of any such specialized alterations shall be paid by Interconnector in accordance with the terms and conditions identified in Article IV herein.

ARTICLE VIII - STANDARDS

8 Minimum Standards. This Agreement and the physical collocation provided hereunder is made available subject to and in accordance with the (i) Bellcore Network Equipment Premises System (NEBS) Generic Requirements (GR-63-CORE and GR-1089-CORE), as may be amended at any time and from time to time, and any successor documents, except to the extent that USWC deviates from any such requirements for its equipment and the facilities and services that it uses and provides or to the extent that USWC allows other Interconnectors to deviate from any such requirements; and, (ii) any statutory and/or regulatory requirements in effect at the execution of this Agreement or that subsequently become effective and then when effective. The Interconnector shall strictly observe and abide by each. USWC shall publish and provide to the Interconnector its Reference Handbook for Collocation to provide Interconnector with guidelines and USWC's standard operating practices for collocation. USWC agrees that the material terms and conditions of collocation are not contained in such a technical publication, nor can USWC change the terms and conditions of this Agreement by changing that technical publication; however, any revision made to address situations potentially harmful to USWC's network or the Premises or Physical Collocation Site, or to comply with statutory and/or regulatory requirements shall become effective immediately and the Interconnector agrees to take steps to comply with such revisions immediately upon its receipt of USWC's written notification of the change.

ARTICLE IX - RESPONSIBILITIES OF THE INTERCONNECTOR AND USWC

9.1 Contact Number. The Interconnector and USWC are responsible for providing to each other personnel contact numbers for their respective technical personnel who are readily accessible 24 hours a day, 7 days a week, 365 days a year.

9.2 Trouble Status Reports. The Interconnector is responsible for promptly providing trouble report status when requested by USWC. Likewise, USWC is responsible for promptly providing trouble report status when requested by Interconnector.

9.3 Cable Extension. The Interconnector is responsible for bringing its cable to entrance manhole(s) or other appropriate sites designated by USWC (e.g., utility poles or controlled environmental vaults), and for leaving sufficient cable length in order for USWC to fully extend the Interconnector-provided cable to the Premises. In the alternative, at the Interconnector's option, USWC shall provide interconnection facilities, i.e., unbundled network transmission elements, from an Interconnector-designated location (e.g., the Interconnector's Node) to the Premises within the Physical Collocation Site. Nothing in this paragraph shall preclude the Interconnector from obtaining unbundled network transmission elements from USWC at any Premises within a Physical Collocation Site for primary or redundant interconnection.

9.4 Regeneration. Regeneration on intra-building connections will be provided by USWC, when requested. The price for regeneration shall be pursuant to Exhibit B.

9.5 Removal. The Interconnector is responsible for removing any equipment, property or other items that it brings into the Premises or any other part of the Physical Collocation Site. If the Interconnector fails to remove any equipment, property, or other items from the Premises or Physical Collocation Site within thirty (30) days after discontinuance of use, USWC may perform the removal and may charge the Interconnector for any materials used in any such removal, and the time spent on such removal at the then-applicable hourly rate for administrative work pursuant to the TA96 factor approach identified on Exhibit B.

9.6 Interconnector's Equipment and Facilities. The Interconnector is solely responsible for the design, engineering, testing, performance, and maintenance of the equipment and facilities used by the Interconnector in the Premises. The Interconnector will be responsible for servicing, supplying, repairing, installing and maintaining the following facilities within the Premises:

(a) its cable(s);
(b) its equipment;
(c) required point of termination cross connects;
(d) point of termination maintenance, including replacement fuses and circuit breaker restoration, to the extent that such fuses and circuit breakers are not controlled by USWC and only if and as required; and
(e) the connection cable and associated equipment which may be required within the Premises to the point(s) of interconnection. USWC does not assume any such responsibility unless contracted to perform such work on behalf of the Interconnector.

9.7 Verbal Notifications Required. The Interconnector is responsible for immediate verbal notification to USWC of significant outages or operations problems which could impact or degrade USWC's network, switches, or services, and for providing an estimated clearing time for restoration. In addition, written notification must be provided within twenty-four (24) hours. Likewise, USWC is responsible for providing immediate verbal notification to the Interconnector of problems with USWC's network or operations which could impact or degrade

Interconnector's network, switches, or services, and provide an estimated clearing time for restoration. Further, USWC shall provide written notification to Interconnector within the same twenty-four (24) hour interval. For the purposes of this paragraph, written notification may be given by electronic mail so long as the notifying party provide the required verbal notification to the other.

9.8 Service Coordination. The Interconnector is responsible for coordinating with USWC to ensure that services are installed in accordance with the service request. Likewise, USWC is obligated to coordinate with Interconnector to ensure the services are installed in accordance with the service request and fulfill the service request in a timely, effective manner.

9.9 Testing. The Interconnector is responsible for testing, to identify and clear a trouble when the trouble has been isolated to an Interconnector-provided facility or piece of equipment. If USWC testing is also required, it will be promptly provided as part of its obligation to provide to Interconnector network interconnection.

ARTICLE X - QUIET ENJOYMENT

Subject to the other provisions hereof, USWC covenants that it has full right and authority to permit the use of the Premises by the Interconnector and that, so long as the Interconnector performs all of its obligations herein, the Interconnector may peaceably and quietly enjoy the Premises during the term hereof.

ARTICLE XI - ASSIGNMENT

The Interconnector shall not assign or otherwise transfer this Agreement, neither in whole nor in part, or permit the use of any part of the Premises by any other person or entity, without the prior written consent of USWC. Any purported assignment or transfer made without such consent may be made void by USWC at its option.

ARTICLE XII - CASUALTY LOSS

12.1 Damage to Premises. If the Premises are damaged by fire or other casualty, and

(i) the Premises are not rendered untenantable in whole or in part, USWC shall repair the same at its expense (as hereafter limited) and the Monthly Charges shall not be abated, or

(ii) the Premises are rendered untenantable in whole or in part and such damage or destruction can be repaired within ninety (90) days, USWC has the option to repair the Premises at its expense (as hereafter limited) and all Monthly Charges shall be proportionately abated while Interconnector was deprived of the use and the interconnection. If the Premises cannot be repaired within ninety (90) days, or USWC opts not to rebuild, then this Agreement shall (upon notice to the Interconnector within thirty (30) days following such occurrence) terminate as of the date of such damage. However, USWC must provide to Interconnector comparable substitute interconnection and collocation arrangements at another

mutually-agreeable Physical Collocation Site without penalty or nonrecurring charges assessed against the Interconnector.

Any obligation on the part of USWC to repair the Premises shall be limited to repairing, restoring and rebuilding the Premises as originally prepared for the Interconnector and shall not include any obligation to repair, restore, rebuild or replace any alterations or improvements made by the Interconnector or by USWC on request of the Interconnector; or any fixture or other equipment installed in the Premises by the Interconnector or by USWC on request of the Interconnector.

12.2 Damage to Premises. In the event that the Premises shall be so damaged by fire or other casualty that closing, demolition or substantial alteration or reconstruction thereof shall, in USWC's opinion, be advisable, then, notwithstanding that the Premises may be unaffected thereby, USWC, at its option, may terminate this Agreement by giving the Interconnector ten (10) days prior written notice within thirty (30) days following the date of such occurrence.

ARTICLE XIII - LIMITATION OF LIABILITY

14.1 Limitation. With respect to any claim or suit for damages arising in connection with the mistakes, omissions, interruptions, delays or errors, or defects in transmission occurring in the course of furnishing service hereunder, the liability of USWC, if any shall be as described in the Interconnection Agreement in effect between the parties.

Each party shall be indemnified and held harmless by the other against claims and damages by any third party arising from provision of the other party's services or equipment except those claims and damages directly associated with the provision of services to the other party which are governed by the provisioning party's applicable tariffs.

Neither party shall have any liability whatsoever to the customers of the other party for claims arising from the provision of the other party's service to its customers, including claims for interruption of service, quality of service or billing disputes.

The liability of either party for its willful misconduct, if any, is not limited by this Agreement.

14.2 Third Parties. The Interconnector acknowledges and understands that USWC may provide space in or access to the Physical Collocation Site to other persons or entities ("Others"), which may include competitors of the Interconnector; that such space may be close to the Premises, possibly including space adjacent to the Premises and/or with access to the outside of the Premises; and that any in-place optional cage around the Premises is a permeable boundary that will not prevent the Others from observing or even damaging the Interconnector's equipment and facilities. In addition to any other applicable limitation, USWC shall have no liability with respect to any action or omission by any Other, except in instances involving negligence or willful actions by USWC or its agents or employees. The Interconnector shall save and hold USWC harmless from any and all costs, expenses, and claims associated with any such acts or omission by any Other.

ARTICLE XIV - SERVICES, UTILITIES, MAINTENANCE AND FACILITIES

16.1 Operating Services. USWC, at its sole cost and expense, shall maintain for the Physical Collocation Site customary Premises services, utilities (excluding telephone facilities), including janitor and, where applicable, elevator services, 24 hours a day, 365 days a year. The Interconnector shall be permitted to have a single-line business telephone service for the Premises subject to applicable USWC tariffs.

16.2 Utilities. USWC will provide negative DC and AC power, back-up power, heat, air conditioning and other environmental support necessary for the Interconnector's equipment, in the same manner that it provides such support items for its own equipment within that Premises.

16.3 Maintenance. USWC shall maintain the exterior of the Premises and grounds, and all entrances, stairways, passageways, and exits used by the Interconnector to access the Premises.

16.4 Legal Requirements. USWC agrees to make, at its expense, all changes and additions to the Premises required by laws, ordinances, orders or regulations of any municipality, county, state or other public authority including the furnishing of required sanitary facilities and fire protection facilities.

ARTICLE XV - DISPUTE RESOLUTION

For disputes arising out of this Agreement, the parties agree that they will follow the procedures as set forth in Section XXXIV of the Interconnection Agreement executed between the parties.

ARTICLE XVI - SUCCESSORS BOUND

Without limiting Article XI hereof, the conditions and agreements contained herein shall bind and inure to the benefit of USWC, the Interconnector and their respective successors and, except as otherwise provided herein, assigns.

ARTICLE XVII - CONFLICT OF INTEREST

The Interconnector represents that no employee or agent of USWC has been or will be employed, retained, paid a fee, or otherwise has received or will receive any personal compensation or consideration from the Interconnector, or any of the Interconnector's employees or agents in connection with the arranging or negotiation of this Agreement or associated documents. USWC represents that no employee or agent of the Interconnector has been or will be employed, retained, paid a fee, or otherwise has received or will receive any personal compensation or consideration from USWC, or any of USWC's employees or agents in connection with the arranging or negotiation of this Agreement or associated documents.

ARTICLE XVIII - NON-EXCLUSIVE REMEDIES

No remedy herein conferred upon is intended to be exclusive of any other remedy in equity, provided by law, or otherwise, but each shall be in addition to every other such remedy.

ARTICLE XIX - NOTICES

Except as may be specifically permitted in this Agreement, any notice, demand, or payment required or desired to be given by on party to the other shall be in writing and shall be valid and sufficient if dispatched by registered or certified mail, return receipt requested, postage prepaid, in the United States mail, or via professional overnight courier, or by facsimile transmission; provided, however, that notices sent by such registered or certified mail shall be effective on the third business day after mailing and those sent by facsimile transmission shall only be effective on the date transmitted if such notice is also sent by such registered or certified mail no later than the next business day after transmission, all addressed as follows:
If to USWC:

_____
_____
_____
_____

If to the Interconnector:

_____
_____
_____
_____

Either party hereto may change its address by written notice given to the other party hereto in the manner set forth above.

ARTICLE XX - COMPLIANCE WITH LAWS

The Interconnector and all persons acting through or on behalf of the Interconnector shall comply with the provisions of the Fair Labor Standards Act, the Occupational Safety and Health Act, and all other applicable federal, state, county, and local laws, ordinances, regulations and codes (including identification and procurement of required permits, certificates, approvals and inspections) in its performance hereunder.

ARTICLE XXI - INSURANCE

Interconnector agrees to maintain, at Interconnector's expense during the entire time that Interconnector and its equipment occupies Premises: (i) General Liability Insurance in an amount not less than one million dollars ($1,000,000.00) per occurrence for bodily injury or property damage, (ii) Employer's Liability in an amount not less than five hundred thousand dollars ($500,000.00) per occurrence, (iii) Worker's Compensation in an amount not less than that prescribed by statutory limits, and (iv) Umbrella/Excess Liability coverage in an amount of five million dollars ($5,000,000.00) excess of coverage specified above.

Each policy shall be underwritten by an insurance company having a BEST insurance rating of B+VII or better, and which is authorized to do business in the jurisdiction in which the Premises is located.

Interconnector shall furnish USWC with certificates of insurance which evidence the minimum levels of insurance set forth herein and which name USWC as an additional insured. The Interconnector shall arrange for USWC to receive at least thirty (30) days advance written notice from the Interconnector's insurance companies of cancellation and shall notify USWC in writing to achieve its approval should the Interconnector later elect to self-insure.

ARTICLE XXII - US WEST'S RIGHT OF ACCESS

USWC, its agents, employees, and other USWC-authorized persons shall have the right to enter the Premises at any reasonable time to examine its conditions, make repairs required to be made by USWC hereunder, and for any other purpose determined to be necessary by USWC in complying with the terms of this Agreement and providing telecommunications services at the Physical Collocation Site. USWC may access the Premises at any time for purposes of averting any threat of harm imposed by the Interconnector or its equipment or facilities upon the operation of USWC equipment, facilities and/or personnel located outside of the Premises. If routine inspections are required, they shall be conducted at a mutually agreeable time. USWC agrees to minimize and to limit any and all instances in which access by its employees, agents or other persons whom it authorizes takes place and agrees not to allow any party which is suspected of any previous instance of wrongdoing of any kind or who has been subject to any form of discipline by USWC at any time in the past to enter Premises. USWC will, in all instances, provide to Interconnector written notification of its access to Premises any time that such access occurs without advance notice to the Interconnector and such written notification shall contain a brief explanation of the reason for such access as well as the name(s) and title(s) of such persons and USWC shall provide to Interconnector such written notice within twenty-four (24) hours of the time when such access took place.

ARTICLE XXIII - OTHER COLLOCATION AGREEMENTS

The parties agree that the provisions of Section 252(i) of the Act shall apply, including state and federal interpretive regulations in effect from time to time.

ARTICLE XXIV - MISCELLANEOUS

27.1 Exhibits. The following Exhibits are attached hereto and made part hereof:

Exhibit A, The Schedule of All Interstate and Intrastate Monthly Recurring Charges
Exhibit B, The Schedule of All Interstate and Intrastate Nonrecurring Charges
Exhibit C, Working Drawings and Specifications Entitled _____
Exhibit D, Point of Interconnection _____

27.2 Variations. In the event of variation or discrepancy between any duplicate originals hereof, including exhibits, the original Agreement shall control.

27.3 Governing Law. This Agreement shall be governed by the laws of the State in which the Premises are located, without regard to the choice of law principles thereof.

27.4 Joint and Several. If Interconnector constitutes more than one person, partnership, corporation, or other legal entities, the obligation of all such entities under this Agreement is joint and several.

27.5 Future Negotiations. USWC may refuse requests for additional space at the Physical Collocation Site or in any other USWC site if the Interconnector is in material breach of this Agreement. In such event, the Interconnector hereby releases and shall hold USWC harmless

27.6 Severability. With the exception of the requirements, obligations, and rights set forth in Article II hereof, if any of the provisions hereof are otherwise deemed invalid, such invalidity shall not invalidate the entire Agreement, but rather the entire Agreement shall be construed as if not containing the particular invalid provision(s), and the rights and obligations of USWC and the Interconnector shall be construed accordingly.

27.7 Paragraph Headings and Article Numbers. The headings of the articles paragraphs herein are inserted for convenience only and are not intended to affect the meaning or interpretation of this agreement.

27.8 Entire Agreement. Recognizing that this Agreement is component of a Interconnection Agreement, this Agreement with the attached schedules and exhibits, and referenced documentation and materials attached hereto set forth the entire understanding of the parties with respect to physical collocation and supersedes all prior agreements, arrangements and understandings relating to this subject matter and may not be changed except in writing by the parties. No representation, promise, inducement or statement of intention has been made by either party which is not embodied herein, and there are no other oral or written understandings or agreements between the parties relating to the subject matter hereof except as may be referenced herein.

27.9 No Third Party Beneficiaries. Nothing in this Agreement is intended, nor shall be deemed, to confer any rights or remedies upon any person or legal entity not a party hereto.

27.10 Binding Effect. (a) This Agreement is binding upon the parties hereto, their respective executors, administrators, heirs, assigns and successors in interest; (b) all obligations by either party which expressly or by their nature survive the expiration or termination of this Agreement shall continue in full force and effect subsequent to and notwithstanding its expiration or termination and until they are satisfied in full or by their nature.

27.11 Force Majeure. Neither party shall be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence including, without limitation, acts of nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, equipment failure, cable cuts, power blackouts, volcanic action, other major environmental disturbances, unusually-severe weather conditions, inability to secure products or services of other persons or transportation facilities or acts or omissions of transportation carriers (collectively, a "Force Majeure Condition"). If any Force Majeure Condition occurs, the party delayed or unable to

perform shall give prompt notice to the other party and shall take all reasonable steps to correct the force Majeure Condition. During the pendancy of such Condition, the duties of the parties under this agreement affected by the Force Majeure Condition shall be abated and shall resume without liability thereafter.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed and delivered this Agreement as of the day and year first above written.

US WEST COMMUNICATIONS:

By:
Title:

INTERCONNECTOR:

By:
Title:

Exhibit A

The Schedule of All Interstate and Intrastate Monthly Recurring Charges

To be provided by the Parties

Exhibit B

The Schedule of All Interstate and Intrastate Nonrecurring Charges

To be provided by the Parties

Exhibit C

Working Drawings and Specifications Entitled

To be provided by the Parties

Exhibit D

Point of Interconnection

To be provided by the Parties

Appendix B -- PAGE 2
INTERCONNECTION CHECKLIST
ADDITIONAL TRUNKING

Interconnector Information

Name:	
Address:	
City, State, Zip:	
Technical Contact Person:	
Technical Contact Person Telephone #:	
USWC Negotiator:	
USWC Negotiator Telephone #:	
Desired Central office (TANDEM)	
CLLI:	
Central Office address:	
City, State:	
Meet Point Address:	

Service Requirements

	Year 1	Year 2	Year 3
USWC End Office:			
- Terminating CCS (peak busy hr)			
- Number Portability:			
Arrangements			
Call paths per # ported			
USWC End Office:			
- Terminating CCS (peak busy hr)			
- Number Portability:			
Arrangements			
Call paths per # ported			
USWC End Office:			
- Terminating CCS (peak busy hr)			
- Number Portability:			
Arrangements			
Call paths per # ported			
USWC End Office:			
- Terminating CCS (peak busy hr)			
- Number Portability:			
Arrangements			
Call paths per # ported			

Remarks:

Please attach a sketch of the agreed upon meet point arrangement

APPENDIX B
ENGINEERING REQUIREMENTS
TRUNK FORECAST FORMS

INTERCONNECTION CHECKLIST
MEET POINT

DATE OF MEETING:

Interconnector Information

Name:	
Address:	
City, State, Zip:	
Technical Contact Person:	
Technical Contact Person Telephone #:	
USWC Negotiator:	
USWC Negotiator Telephone #:	
Desired U S WEST Central office	
CLLI:	
Central Office address:	
City, State:	
Meet Point Address:	

Equipment

Manufacture/ model#	Quantity	

Cable Makeup

Number of cables:	
Number of fibers per cable:	
Distance from USWC to Meet Point	
Distance from MFS to Meet Point	

Service Requirements

	Year 1	Year 2	Year 3
DS3			
DS1			

Remarks:

Please attach a sketch of the requested meet point arrangement: