- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Interconnection Contract)

Negotiations Between AT&T OF THE MOUN-)

TAIN STATES, INC., and U S WEST COMM-) DOCKET NO. 96-087-03

UNICATIONS, INC., Pursuant to 47 U.S.C.)

Section 252.)

)

In the Matter of the Petition for Arbitration,)

Consolidation, and Request for Agency Action of)

MCIMETRO ACCESS TRANSMISSION) DOCKET NO. 96-095-01

SERVICES, INC., Pursuant to 47 U.S.C. § 252)

(b) of the Telecommunications Act of 1996.) ARBITRATION ORDER

ISSUED: April 28, 1998

BY THE COMMISSION:

We clarify herein decisions made in prior Arbitration Orders issued December 26, 1996, and March 27, 1997, respectively, in Docket No. 96-095-01 In the Matter of the Petition for Arbitration, Consolidation, and Request for Agency Action of MCImetro Access Transmission Services, Inc., Pursuant to 47 USC § 252 (b) of the Telecommunications Act of 1996 ("MCI Order") and in Docket No. 96-087-03 In the Matter of the Interconnection Contract Negotiations between AT&T Communications of the Mountain States, Inc., and U S West Communications, Inc., Pursuant to 47 USC Section 252 ("AT&T Order"). We also decide remaining issues presented for resolution by US West Communications, Inc. ("USWC"), AT&T of the Mountain States, Inc. ("AT&T") and MCImetro Access Transmission Services, Inc. ("MCI") and argued in briefs filed by the above parties to this arbitration. [(1)]

The subject arbitrations have been before the Commission since September, 1996 when petitions for arbitration were filed by AT&T and MCI pursuant to § 252 of the federal Telecommunications Act of 1996 ("1996 Act") and state law. Following arbitration hearings held in October, 1996, the Commission issued on December 2, 1996, an interconnection agreement between AT&T and USWC in the AT&T Arbitration which was followed on December 26, 1996 by the MCI Order. Technical conferences were held January 16 and January 24, 1997 to discuss the status of negotiations between the parties and issues addressed in the December 2, 1996 interconnection agreement and the MCI Order. On March 27, 1997, the Commission issued an interlocutory order in the AT&T arbitration. Following multiple requests by parties for enlargements of time, a non-executed Agreement for Local Wireline Network Interconnection and Service Resale Between AT&T/MCI and USWC was filed by the parties on June 27, 1997 ("interconnection agreement"). Briefs were filed in June, 1997 in support of or opposition to contractual provisions of the proposed interconnection agreement, and Supplemental Briefs were filed in August and September, 1997 in response to issuance of the FCC's Shared Transport Order and decisions by the Eighth Circuit Court of Appeals interpreting questions of law surrounding an incumbent's obligation to provide unbundled network elements in existing combinations.[(2)] Finally, a technical conference was held August 15, 1997 to apprise the Commission of progress made in negotiating salient but then unresolved interconnection issues. AT&T and MCI now ask the Commission to review the briefs and disputed provisions of the proposed interconnection agreement, and order language for inclusion in final interconnection agreements between them and USWC. They express intent to finalize interconnection agreements with USWC in accordance with this order and submit executed agreements for Commission approval, thus triggering the approval process and decision schedule specified in § 252(e) of the 1996 Act.

We build in this order upon a foundation laid by state and federal law, by FCC rules, by current and proposed Commission rules and by prior interlocutory orders issued in this consolidated arbitration. In considering the decisions made herein we were cognizant of the record developed in four pertinent interrelated rulemakings conducted since passage of the state Telecommunications Reform Act of 1995 ("TRA95") and the 1996 Act. Those proceedings, in which parties to this arbitration actively participated, resulted in promulgation of initial rules regarding local interconnection (R746-348), competitive entry (R746-349), universal service (R746-360) and intercarrier service quality (R746-365). In those rulemakings, we considered legal, policy and process issues associated with interconnection of the essential facilities and services of USWC and competing carriers.

This order arbitrates unresolved issues using the numbering protocol presented in briefs and in an "Issues Matrix-Utah Interconnection" attached to correspondence to the Commission dated July 1, 1997, from counsel for MCI. We consolidate certain issues for discussion and decision where similarity of context makes it appropriate. It is the Commission's intent that this order be final and that USWC and AT&T, and USWC and MCI, respectively, submit within thirty days of this order fully executed initial interconnection agreements which embody the decisions made herein.

Issue A.-1. -- Branding

The Commission was apprised at the August, 1997 technical conference that a line class coding problem exists in several Utah switches which precludes rebranding of directory assistance and operator assisted call completion services with a competitor's brand name. USWC cannot properly route AT&T/MCI traffic to directory assistance and operator-handled trunk groups. The switch at issue is the AT&T model 1AESS analog switch which serves approximately 100,000 Utah lines, and which this Commission has previously found to be "obsolete and inferior" technology.[(3)]

USWC argues it has a first amendment right to brand its own services, that the 1996 Act does not require degradation of service provided its own customers and that its proposed contract language complies with FCC rules. USWC attests in essence that it is technically infeasible for them to rebrand operator and directory assistance services in the affected exchanges. MCI argues that USWC, pursuant to 47 CFR 51.613, should be required to unbrand its operator and directory assistance services until the 1AESS switches are replaced. AT&T/MCI argue that § 252(c)(3) requires USWC to provide unbundled network elements in a nondiscriminatory manner and that 47 CFR 51.613 requires parity in the provision of unbundled elements.

We note that Commission Rule R746-348-7 (12) designates operator services and directory assistance as essential facilities and services under UCA § 54-8b-2. In the MCI Order, we decided that branding of directory assistance and operator services should comply with 47 CFR 51.613 (c). We find that CFR 51 613(c) unambiguously requires that USWC unbrand or rebrand a resold service at a competing carriers request unless it can show why failure to do so is reasonable and non-discriminatory. USWC has not retired obsolete analog switch technology that would cure the underlying cause of its inability to rebrand directory and operator services that AT&T and MCI seek to purchase. Consequently, we find USWC's failure to rebrand directory and operator services to be an unreasonable and discriminatory restriction on resale of those services.

We find that USWC should unbrand operator and directory services for its own customers in exchange areas where it is not technically feasible to rebrand operator services and directory assistance provided customers of AT&T or MCI. In the event an exchange area exists where USWC has not yet branded previously unbranded operator services and directory assistance service, it may not brand those services with the USWC name unless and until it can rebrand those services for customers of AT&T and MCI. We so decide in order to minimize customer confusion that may arise if operator and directory services are provided by different carriers. We conclude that the public interest is best served if brand identification and differentiation of carrier-branded services is allowed to develop.

Consequently, we order adoption of the following language proposed by AT&T/MCI:

8.3 At AT&T/MCIm's request, U S WEST shall be obligated to provide branding and unbranding of services provided to AT&T/MCIm Customers pursuant to this Agreement in a nondiscriminatory manner consistent with the branding of such services to U S WEST Customers.

8.4 If AT&T/MCIm requests that a service provided under this Agreement be branded as an AT&T/MCIm service and U S WEST informs AT&T/MCIm that such branding is not available or if it is not practical to so brand the service, then U S WEST will offer AT&T/MCIm the service on an unbranded basis at AT&T/MCIm's request. If AT&T/MCIm requests unbranding of a service under such circumstances, U S WEST must unbrand their own service.

8.5 Without limitation of the provisions of Section 8.1 and 8.2, if U S WEST is offering a service on an unbranded basis, U S WEST may brand such service with the U S WEST brand only if U S WEST also offers to brand the service with the AT&T/MCIm brand.

Issue A.- 2. -- Indemnification

AT&T/MCI ask that we reconsider a decision made in the AT&T Order and reject language included in ¶ 18.1 (Part A) releasing U S WEST from indemnifying AT&T/MCI against violations of third party intellectual property rights. They seek indemnification by USWC against any loss attributable to USWC's failure to identify owners of the third party intellectual property. AT&T/MCI oppose inclusion of USWC's proposed ¶ 18.1 arguing that it would conflict with agreed-upon language contained in ¶ 5.2 [Intellectual Property] of the agreement. AT&T/MCI assert that they should not bear the risk of loss if the list provided pursuant to ¶ 5.2 is incomplete inasmuch as USWC, as a licensee of intellectual property used in its network, should be able to identify all licensors. AT&T/MCI argue that USWC should bear the risk of omission or failure to correctly identify third parties holding an intellectual property right which AT&T/MCI must seek approval to use.

USWC argues that language it proposes in ¶ 18.1 releases it from liability to a third party license holder that may refuse to license AT&T/MCI to use an intellectual property right. USWC correctly argues that AT&T/MCI should bear the responsibility of securing any right-to-use approval. Failing to secure that approval, AT&T/MCI should bear liability for any usage violating a license agreement between USWC and a third party, according to USWC.

We find credence in AT&T/MCI's argument that USWC, pursuant to ¶ 5.2, must provide a reliable list of all known and necessary third party owners of intellectual property. As a practical matter, we would expect AT&T/MCI or a product licensor to be sufficiently familiar with network components, whether through network disclosure requirements, knowledge of business relationships or other means, to determine any property licensing obligation attendant to hardware or software products used in USWC's network.

AT&T, MCI and USWC agree that the proposed language implements the intent of the AT&T Order. The Commission ordered therein that "the parties adopt contractual language releasing U S WEST from indemnifying AT&T against any property right violation claimed by a third party owner of a patent, copyright or intellectual property right to which AT&T is granted access if such access is afforded in conjunction with U S WEST's compliance with the interconnection agreement between the parties or federal or state law." Accordingly, we will not reverse our prior decision. We order inclusion of USWC's proposed language in the final interconnection agreement with minor amendment to cross-reference in paragraph 18.1 paragraph 5 in its entirety. We conclude this will emphasize USWC's burden of accuracy in providing a complete list of all third party intellectual property holders. We order inclusion of the following modified language in ¶ 18.1.:

18.1 The Party providing access under this Agreement shall have no indemnification obligation hereunder for any loss, cost, claim, liability, damage or expense arising on account of Third Party Intellectual Property after having given written notice to the other Party of the Third Party Intellectual Property pursuant to Section 5.~~1.~~ above.

Issue A.-3. -- Limitation of Liability

USWC argues that language proposed by AT&T/MCI would undermine traditional notions of limitation of liability between contracting parties by allowing AT&T/MCI to circumvent standard exceptions to limitation of liability, which USWC limits to intentional or gross negligence. USWC objects to AT&T/MCI's "pattern of conduct" language which they charge would impose a lower evidentiary standard that will give rise to unlimited liability. USWC asserts that AT&T/MCI's proposed language places inordinate discretion in the hands of a third party decision maker. They cite an absence of case law incorporating the "pattern of conduct" standard as an exception to limitation of liability. AT&T/MCI's proposed language for ¶ 19.3 contemplates award of consequential damages if a decision maker were to find a pattern of conduct violating a party's obligations under terms of the interconnection agreement. AT&T/MCI are rightfully concerned that USWC could evade statutory obligations by repeated breaches of contract provisions thereby spoiling AT&T/MCI's ability to provide service.

We note there is standard reciprocity in the limitation of liability clauses contained in ¶ 19.3 of the agreement. We concur with AT&T/MCI that they should not have to prove wilful misconduct or gross negligence when USWC effectively controls the quality of service received by an AT&T/MCI customer which in turn bears substantially upon consumer perceptions of the business reputation of AT&T/MCI. Insofar as AT&T/MCI are highly dependent on USWC in its role as primary supplier of essential facilities and services that will allow AT&T/MCI to provide public telecommunications services, we conclude that the "gross or intentional negligence" standard advocated by USWC presents at this time too high an evidentiary standard of proof for limitation of liability.

The language permitting consequential damages if a decision maker finds a pattern of conduct in violation of the terms of the interconnection agreement provides a less stringent but necessary standard for a nascent competitive environment with limited supply of network elements. Consequently, we conclude that an arbitrator or other decision maker engaged in dispute resolution under section 27 of the agreement should have latitude to determine actual and consequential damages, particularly when section 27 provides that such a damage award is subject to a due process right of appeal. USWC recommends an amending clause to AT&T/MCI's proposed language that reflects the traditional limitations of liability as set forth in USWC's tariffs. We find traditional tariff language limiting carrier liability, which is primarily applicable to end users, to be inappropriate for the intercarrier interconnection environment inasmuch as such tariffs impose minimal carrier liability related to the availability or impairment of provided services.

We order that the following language proposed by AT&T/MCI be incorporated in ¶ 19.3 of the final agreement without USWC's cross-reference to tariffed limitations of liability:

(iii) under the circumstances presented to the arbitrator, the Commission or other decision maker, as the case may be pursuant to the dispute resolution process in Section 27, a pattern of conduct is found to exist by such arbitrator, the Commission or other decision maker in violation of a party's obligations under this Agreement that justifies an award of Consequential Damages. ~~, nor shall anything contained in this section limit the Parties indemnification obligations, as specified above.~~

Issue A.-4. -- Dispute Resolution

We note at the outset that this is one of two issues on which AT&T and MCI differ. AT&T and USWC have agreed in section 27 of the interconnection agreement to binding arbitration conducted under American Arbitration Association rules. USWC urges that identical language be adopted in the agreement with MCI. USWC accuses MCI of forum shopping for successive legal venues. MCI's language would attempt to initially resolve disputes through non-binding arbitration or by a regulatory body such as this Commission or the FCC, as appropriate under the 1996 Act or the state TRA95.

We encouraged parties in the AT&T Order to negotiate expedited dispute resolution procedures, to wit:

"We find prudency in establishing methods for expeditious resolution of future disputes subsequent to our approval of an initial interconnection agreement, whether arbitrated or negotiated. We find it necessary given the myriad of technical details and business process issues attendant to interconnection and the fluidity of evolving industry efforts to integrate systems, particularly software, which are controlled by competing parties but necessary to provide seamless operation of network components for consumers.

Subsequent to the effectiveness of the initial interconnection agreement, when differences between the parties relating to implementation or compliance issues cannot be resolved by negotiated amendment, the Commission may, upon request made pursuant to USC § 252 (a) (2), mediate differences arising in the course of negotiation. The conduct of the mediation shall comport with *Rule 101 of the Utah Rules for Court Annexed Alternative Dispute Resolution* and any additional procedural requirements established at the outset by the Commission following consultation with the parties regarding the orderly and expeditious administration of the mediation.

Alternatively, the parties may invoke formal or informal complaint procedures pursuant to R746-100 and UCA 63-46b-3 through 63-46b-8."

The above language, which places the Commission in the role of decision maker in interconnection agreement disputes, was ordered following consideration of §§ 253(e) and 253(b) of the 1996 Act and UCA 54-8b-2.2 (1) (e).[(4)] The Commission does not seek to become an intervenor with decision making capacity when contracting parties agree to commercial dispute resolution processes, or mutually agree to waive rights or remedies that would otherwise be available. Similarly, we find cause not to place limitations on any available remedy an individual party may seek under state or federal law. We concur with MCI that it would exceed our jurisdiction to require a party to waive its right to any statutorily available remedy.

Consequently, we order that the interconnection agreement between USWC and MCI reflect the following language proposed by MCI in section 27.1:

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.

Issue A.-5. -- Collocation

The collocation language at issue is proposed by USWC and defines an "as soon as reasonably possible" time frame by which AT&T/MCI, as collocators, must occupy and use leased collocation space as being "not later than 60 days from completion of construction of the collocated space." USWC asserts that 60 days will provide the Commission and other CLECs assurance that any space reserved by AT&T/MCI for facility collocation will be properly used. AT&T/MCI oppose the 60 day provision arguing that it negates the "as soon as reasonably possible" standard, and asserting that it could force AT&T/MCI under ¶ 40.3.4 to use USWC's vendors to complete installation of facilities within the allowed time. AT&T/MCI allege this would negate their negotiated rights included in ¶ 40.3.1.1. A 60-day time limit they claim would unreasonably bind them when events preventing use of the collocated space within 60 days are beyond their control.

In both the AT&T and MCI Orders we decided that terms and conditions of collocation should comply with the standards enumerated in 47 CFR 51.323. In the AT&T Order, we recognized a concern raised by the Division of Public Utilities about warehousing of collocation space by instructing the parties "to specifically address in contract language certain issues attendant to physical collocation including rationing, reservation and forfeiture of space in addition to construction time tables." 47 CFR 51.323 (f) (6) allows an incumbent to "impose reasonable restrictions on the warehousing of unused space" by collocators. Commission Rule R746-348-2 requires that collocation space be available on a first-come first-served basis to entrants who are "ready and able to use the entire space they receive within a reasonable time." Finally, the Commission has recently issued for comment Proposed Rule 746-365 - *Intercarrier Service Quality* [published 2/15/98], that specifies time frames for collocation processes commencing with the request for collocation through completion of construction. The rule also contains an expedited hearing process for resolution of collocation cost disputes that is germane to AT&T/MCI's claim that USWC's language negates rights granted them by ¶ 40.3.1.1. of the interconnection agreement.

We conclude that USWC's proposed language complies with state and federal rules. Accordingly, we order that the following language proposed by USWC be included in final interconnection agreements:

40.3.4 AT&T/MCI must use leased space as soon as reasonably possible and in no event later than 60 (sixty) days from the completion of construction of the collocated space,

Issue A.-6. -- Directory Listings - Commissions

AT&T/MCI's proposed language seeks commission sales compensation from USWC for directory advertising sold to AT&T/MCI customers, payable at the same rate paid to USWC or its affiliate. In support of that proposition, AT&T/MCI argue that USWC receives access to AT&T/MCI customers and avoids costs related to handling customer accounts which would otherwise be incurred if those customer accounts were retained by USWC. At the August 15, 1997 technical conference, the parties represented that directory issues are near resolution and "will go away." MCI represented that it will have a separately negotiated publishing agreement with US West Dex. USWC noted that US West Dex had offered AT&T/MCI a commission for yellow page revenues from new customers.

USWC makes compelling argument in opposition to AT&T/MCI's proposed language that would require it to serve as agent for AT&T/MCI in obtaining directory publishing service from a separate corporate affiliate. USWC asserts that AT&T/MCI seek to tie the purchase of telephone service to the sale of advertising, thereby interfering with existing contracts between US West Dex and its customers. Insofar as US West Dex is neither an ILEC under § 251(h) nor a "telecommunications carrier" under § 153(44) of the 1996 Act, AT&T/MCI can neither negotiate with Dex nor petition for arbitration between themselves and Dex pursuant to, respectively, §§ 251 or 252 of the Act. USWC argues this is so because yellow pages publication and advertising is not a "network element" subject to unbundling inasmuch as it is not "a facility or equipment used in the provision of telecommunications service." As a consequence, they claim, the Commission has no jurisdiction over US WEST Dex and may not create jurisdiction through requirements which run to USWC.

As noted in USWC's brief, AT&T/MCI cite no legal justification in the 1996 Act, FCC rules or Commission orders for their position. We concur in USWC's argument that any arrangement to share US West Dex Yellow Page advertising income must result from private negotiation between AT&T/MCI and US West Dex. We conclude that USWC should not be required to perform a clearing house function for advertising sales transactions consummated between AT&T/MCI and Dex. We conclude that we cannot in this instance regulate a business relationship between AT&T/MCI and a publisher of telephone directories. Consequently, we order that USWC's proposed language be adopted as ¶ 44.1.12 of the final interconnection agreement:

44.1.12 AT&T/MCIm shall receive commissions from US WEST's directory publisher by all compensation generated by such advertising at the same rate paid, if any, to US WEST or any of its Affiliates as specified in the directory publishing agreement between US WEST and US WEST Dex and any other Affiliate or in any other written agreement.

Issue A.-7. -- Directory Listings - Directory Cover

AT&T/MCI propose language in ¶ 44.1.15 that would require US West Dex to alter its directory cover to indicate that AT&T/MCI customer listings are contained in the book. AT&T/MCI perceive omission of such public notice an impermissible barrier to entry contrary to § 253(a) of the 1996 Act, claiming it would handicap their local market entry. Consumers, AT&T/MCI assert, should not have to guess whether the "phone book" contains information they seek. USWC asserts that AT&T/MCI's proposed language is an improper intrusion on US West Dex's editorial right to design and provision its directory cover, which raises First Amendment and intellectual property issues. USWC expresses concern that public recognition of the AT&T/MCI brand names will lead to market confusion.

Numbering resources are deemed an essential service by Commission Rule R348-7. Commission rule R348-6 requires that consumers be provided subscriber directories and that AT&T/MCI and other competing local exchange service providers be provided access to USWC's customer guide/information pages published by US West Dex.[(5)] Specifically, R348-6 (6)(b) requires that an incumbent local exchange carrier or its affiliate make available to AT&T/MCI adequate space in the customer guide pages of the directory to allow a new local exchange service provider to provide its customers and prospective customers with information reasonably similar to that provided by the incumbent for its customers. Finally, the MCI Order requires that "published directory listings...be alphabetically commingled...and not published, provided or sold in a manner that segregates end users by carrier".

Absent evidence of a public interest requirement that competing carriers' names be placed on Dex's directory covers, we find that current Commission rules provide for the non-discriminatory availability of subscriber listings and carrier contact information without infringement on US West Dex's editorial rights. For reasons set forth below and in the section immediately preceding, we conclude that the language proposed by AT&T/MCI for ¶ 44.1.15 should be stricken from the final interconnection agreement.

~~44.1.15 At no charge, U S WEST shall ensure that its directory publisher prominently indicates on each directory cover that AT&T/MCIm customer listings are included in such directory.~~

Issue A.- 8. -- Directory Listings - White Pages

AT&T/MCI propose a blanket non-discrimination provision in ¶ 44.1.17 which USWC opposes without offering alternative language. The language provides that AT&T/MCI, as a matter of parity, receive the same treatment as USWC receives with respect to white page and yellow page matters. In opposing AT&T/MCI's proposed language in ¶ 44.1.17, USWC expresses concern that such open-ended language will cause AT&T/MCI to seek a prorata share of Yellow Page advertising and directory listing revenues, and to have AT&T/MCI's logo placed on the cover of Dex directories. USWC again argues that AT&T/MCI cite no legal authority granting an "equal treatment" entitlement to revenues received from a non-telecommunication product produced and distributed by a non-telecommunications carrier.

We address all concerns raised by USWC in preceding or subsequent decisions reached herein. Insofar as the evidence and issues relevant to Issue A.-8. are subsumed in our decisions regarding Issues A.-6., A.-7., A.-9. and A.-10., and by the MCI Order, we find cause to order, in accord with those decisions, that the language proposed by AT&T/MCI be stricken from the final interconnection agreement.

~~44.1.17 AT&T/MCIm shall receive the same treatment as U S WEST receives with respect to white page and yellow page matters.~~

Issue A.- 9. -- Directory Listings - Revenue - Sales of Listings

Both parties propose language regarding sale to third parties of listings in USWC's directory database. The unresolved issue goes to whether AT&T/MCI should receive a share of the proceeds from the sale of directory lists reflecting a prorata share of AT&T/MCI customer names included in the directory database. USWC asserts that AT&T/MCI are not entitled to revenue produced by USWC's sale of listings in its directory assistance database. AT&T/MCI argue that their listings will add marketable value to USWC's database of directory listings insofar as it may include, at AT&T/MCI's option, their customers in addition to USWC's and other carriers' customers.

We note at the outset that this issue may implicate consumer privacy concerns subject to § 222 of the 1996 Act and an ongoing FCC proceeding in Docket 96-115 captioned In the Matter of Customer Proprietary Network Information ("CPNI") Obligations of the 1996 Act. Commission Rule R746-348 requires telecommunications corporations to protect CPNI in accordance with federal and state statutes and rules. In the MCI Order, we prohibited USWC from using MCI listings for purposes of marketing telecommunication services.

We agree with USWC that AT&T/MCI are free to sell their listings by means other than through USWC's sale of database listings. Pursuant to ¶ 44.2.1 (b), AT&T/MCI may, at their discretion, withhold licensing USWC to use their directory listings for any purpose other than directory assistance. Pursuant to ¶ 44.1.11, USWC assumes responsibility for maintaining without charge AT&T/MCI listings contained in its database. Insofar as USWC performs directory database maintenance and functions as a listing information clearing house without charge to AT&T/MCI, coupled with the fact that AT&T/MCI can withhold licensing approval that would authorize USWC to sell AT&T/MCI listings to third parties, we conclude at this time that USWC's proposed language should be adopted in ¶ 44.2.1 (c) of the final interconnection agreement:

44.2.1(c) U S WEST shall be entitled to retain all revenue associated with any sales pursuant to subparagraphs (a) and (b) above.

Issue A.-10. -- US West Dex

The variation in language proposed by the parties for ¶ 46.1 appears minor. The issue goes to the surety that negotiations will occur between AT&T/MCI and directory publisher regarding yellow pages advertising, directory distribution, access to call guide pages and yellow pages listings. USWC again avers that it should not be accountable for the outcome of negotiations between AT&T/MCI and its affiliate, US West Dex. AT&T/MCI find problematic USWC's affirmation that it contemplates negotiation between AT&T/MCI and US West Dex "or other directory publishers".

Insofar as the record on this issue is meager, we do not presume to comprehend all the nuances. We found in deciding the issue of advertising sales commissions that we lacked vertical jurisdiction to regulate, through USWC, sales compensation practices between US West Dex and AT&T/MCI. We conclude here that USWC's affirmation that negotiations between AT&T/MCI and Dex "will be necessary" more appropriately represents our view than the "may be necessary" language advanced by AT&T/MCI. AT&T/MCI's conditional language contemplates contingencies which are not discussed on the record. We order that the following language, as amended to reflect our decision, be included as ¶ 46.1. of the final interconnection agreement:

46.1 U S WEST and AT&T/MCIm agree that certain issues, such as yellow page advertising, directory distribution, access to call guide pages, and yellow page listings, will be the subject of negotiations between AT&T/MCIm and ~~U S WEST Dex or other~~ directory publishers. U S WEST acknowledges that AT&T/MCIm may request U S WEST to facilitate discussions between AT&T/MCIm and US WEST Dex.

Issue A.-11. -- Access to Poles, Ducts, Conduits, and Rights-of-Way (ROW) - Reciprocity

At issue in disputed language proposed by both parties is whether AT&T/MCI under state and federal law have unilateral access to USWC's poles, ducts, conduits, and rights-of-way, or, whether that access is reciprocal. § 251(b)(4) of the 1996 Act imposes on *all* local exchange carriers "the duty to afford access to the poles, ducts, conduits, and rights-of-way of such carrier to competing providers of telecommunication services on rates, terms and conditions that are consistent with Section 224." AT&T/MCI oppose reciprocal access to rights-of-way arguing that the language in § 251(b)(4) is negated by § 224(a)(5) which defines "telecommunications carrier" to exclude incumbent local exchange carriers, thus denying incumbents from holding any reciprocal access right.[(6)] AT&T/MCI argue that § 224(a)(5) must be read in conjunction with § 251(b)(4) to determine whether access is lawfully reciprocal. USWC, however, highlights an inconsistency between the operative obligations of a "telecommunications carrier" as cited above, and a "utility" which is defined in § 224(a)(1) to include any "local exchange carrier...who owns or controls poles, ducts, conduits or rights-of-way used....for any wire communications." Under § 224 (f)(1), a utility is required to provide "any telecommunications carrier with non-discriminatory access to any pole, duct, conduit or right-of-way owned or controlled by it."

AT&T/MCI assert that § 224 (f)(1) is governing law to the extent it recognizes Congress' express exclusion of incumbent local exchange carriers from the definition of "telecommunications carrier" for purposes of § 224.[(7)] As a consequence, AT&T/MCI assert that there is no legal basis for them to provide USWC access, and that USWC's proposed language in ¶ 47.1. of the interconnection agreement is therefore inconsistent with the 1996 Act. We disagree as described below.

This Commission's authority over the rates, terms and conditions of access to poles, ducts, conduits, and rights-of-way was preserved by amendments to § 224(c) included in the 1996 Act. Pursuant to § 224(c), this Commission long ago provided the FCC formal notice certifying our jurisdiction over the subject matter.[(8)] That jurisdiction was established by UCA 54-4-13 and is further evidenced by Commission Rule R746-345 which was promulgated to comply with 47 CFR 1.1414 (a)(3).[(9)] Having found clear jurisdiction under state and federal statutes over this issue, we turn now to matters of law governing access to poles, ducts, conduits, and rights-of-way.

We conclude following review of state law that it would be unlawful to exclude an incumbent local exchange carrier from the definition of telecommunications carrier or local exchange carrier. Utah law defines incumbent local exchange carrier similarly to the 1996 Act, but, unlike the FCC rule implementing §224(a)(5), does not exclude incumbents by definition (or otherwise) from access to essential interconnection facilities. In the alternative, AT&T/MCI and USWC are a "public utility" under Utah law inasmuch as they are "telephone corporations" serving "telephone lines" pursuant to UCA 54-2-1. AT&T/MCI and USWC are also "telecommunications corporations" providing "public telecommunications services", including "intrastate telecommunications service" and, we hope in the case of AT&T/MCI, "local exchange service" and "new public telecommunications service" as each of those terms is defined in UCA 54-8b-2. Under Utah law, none of the above defined terms mutually excludes AT&T/MCI or USWC, but rather expressly includes them. Irrespective of which definition is used to frame the legal issue, the absence of conditional statutory language in Utah law requires that USWC and AT&T/MCI be treated similarly for purposes of access to poles, ducts, conduits, and rights-of-way insofar as we have exerted jurisdiction pursuant to §224(c), and UCA 54-8b-2.2 requires it.

We further find that Utah law requires intercarrier reciprocity in accessing such interconnection facilities.[(10)] Although access to poles, ducts, conduits, and rights-of-way is not deemed an essential facility under current Commission rules, interoffice transmission facilities, feeder and distribution facilities in addition to intra-premises cabling and inside wiring are. Inasmuch as the forementioned essential facilities could not be essential absent access to the aerial and underground pathways they traverse, we find cause to exercise our §224(c) jurisdiction in conjunction with UCA 54-4-13 to conclude that the public interest is best served if access to poles, ducts, conduits, and rights-of-way is reciprocal. We therefore order that USWC's language, as modified below, be used in ¶ 47.1 of the final interconnection agreement:

47.1 Each Party shall provide the other Party nondiscriminatory access to poles, ducts, rights-of-way and conduits it controls on terms, conditions and prices as described herein. While the language in Section 47 describes the provision of poles, ducts, rights-of-way and conduits by U S WEST to AT&T/MCIm, the language in this Section shall apply reciprocally to the provision of poles, ducts, rights-of-way and conduits by AT&T/MCIm to U S WEST *on terms, conditions and prices comparable to those described herein.*

Issue A.-12. -- Access to Poles, Ducts, Conduits, and Rights-of-Way (ROW) - Information

AT&T/MCI include a provision requiring USWC to provide within 20 days of a request detailed engineering data and other plant records and drawings related to specific requests for poles, ducts, conduits and rights-of-way, and an itemization of fees and expenses incurred to provide the information. USWC argues that AT&T/MCI do not need the information envisioned to collocate facilities. They contend the information likely to be requested represents sensitive and proprietary network engineering data and plant records. Finally, USWC insists it is unlikely it could locate, gather, screen proprietary data and distribute the information to AT&T/MCI within 20 days.

AT&T/MCI argue the engineering records and plant drawings are needed to properly engineer and install their networks for specific traffic routing. AT&T represents that USWC agreed to use language negotiated in the Arizona and Washington interconnection agreements in Utah but subsequently withdrew its approval to use the initial portion of ¶ 47.4.7 in the Utah agreement. The remainder of ¶ 47.4.7 is agreed language which allows AT&T/MCI and USWC employees to jointly examine network data at no cost to either party.

AT&T/MCI espouse that it is in USWC's best interest to provide network records and drawings prior to AT&T/MCI attempting to engineer facilities without them. We agree. However, in accordance with our decision in the preceding section, we order that access to information regarding poles, ducts, conduit and ROW be reciprocal and so modify the interconnection agreement. In so deciding, we acknowledge a far greater burden of disclosure on USWC owing to its predominant share of local network assets. USWC's concern about disclosure of "sensitive" network information related to poles, ducts, conduit and ROW will be superseded by rule or law requiring organization of joint planning processes necessary for efficient engineering of transport and termination facilities for interconnected networks. We find such joint planning as described in proposed Commission Rule R746-365-5 to be in the best interests of efficient interconnection of public switched networks. We find it furthers the purpose and intent of UCA 54-8b-2.2 in addition to §256, subsections (a) and (d), and §273 subsections (c)(4) and (e)(3) of the 1996 Act. We conclude that reciprocal access by parties to network information will minimize occurrences of blocking or other impairment in the delivery of public telecommunication services to customers of the parties, and facilitate provisioning of essential interconnection facilities between the parties.

USWC did not produce evidence validating its assertion that 20 days is insufficient to provide the subject information. In the AT&T Order we required USWC for purposes of installation of interconnection facilities and unbundled network elements to "provide AT&T real-time interfaces to all information elements it reasonably needs to achieve parity of access to provisioning OSSs, including "any component of US West's entire chain of service order fulfillment systems...used for circuit design, provisioning, installation, testing and service activation functions." We expect some of the subject information to be accessible in non-legacy, re-engineered automated mapping/facility management (AM/FM) systems, in both spatial and aspatial form, that contain facility inventories by geographic area, including but not limited to, information regarding poles, conduit and innerduct housing outside plant cable and wire facilities. We find such access will allow parties to optimize interconnection engineering for terminating transport facilities, thus facilitating needed infrastructure modernization to serve changing market demands. Finally, we note that the record does not reveal USWC's motive for withdrawal of its voluntary agreement to use language from the Washington agreement.

For the above reasons, we order that AT&T/MCI's language, as amended by the Commission, be included as ¶ 47.4.17 of the final interconnection agreement:

47.4.17 U S WEST *and AT&T/MCIm* agree to provide current detailed engineering and other plant records and drawings for specific requests for poles, ducts, conduit and ROW, including facility route maps at a city level, and the fees and expenses incurred in providing such records and drawings on the earlier of twenty (20) Business Days from ~~AT&T/MCIm's~~ *the date of* request or the time within which U S WEST provides this information to itself or any other Person. Such information shall be of equal type and quality as that which is available to U S WEST's *or AT&T/MCI's* own engineering and operations staff. Either Party ~~U S WEST~~ shall also allow personnel designated by the other Party ~~AT&T/MCIm~~ to jointly examine ~~with U S WEST personnel~~, at no cost to the other Party ~~AT&T/MCIm~~ for such personnel, such engineering records and drawings for a specific routing at U S WEST Central Offices and U S WEST Engineering Offices upon ten (10) days' written notice. ~~to U S WEST.~~ U S WEST *and AT&T/MCIm* acknowledge that the request for information and the subject matter related to the request made under this Section shall be treated as Proprietary Information.

Issue A.-13. -- Access to Poles, Ducts, Conduits, and Rights-of-Way (ROW) - Reservation

AT&T/MCI propose language for ¶ 47.4.10. allowing them for 90 days following USWC's confirmation of the availability of a facility and pending their final acceptance, a right to reserve pole, duct, conduit and ROW facilities for their exclusive potential use. USWC opposes the language and requests deletion of the entire section. AT&T unilaterally proposes to pay an undetermined "reservation fee" to continue its reservation if a facility USWC confirms as available to AT&T/MCI is requested by another carrier, unless the requested facility "constitutes excess and unused inventory". AT&T views the reservation fee as non-prejudicial to USWC insofar as it would be compensated for lost opportunity cost if a willing third party carrier is denied access due to AT&T's reservation. AT&T/MCI call their proposed language a practical measure to facilitate interconnection, claiming that lack of a mechanism to reserve poles, ducts, conduit and ROW will create a competitive disadvantage in their planning and mobilization processes.

USWC insists that access to poles, conduit, ducts and ROW be handled on a first-come, first-served basis like requests for collocation. They argue that the language at issue contradicts §224(f)(1) and FCC rules[(11)] which prohibit discrimination among telecommunication carriers by requiring "non-discriminatory access to any poles, conduit, duct or ROW owned or controlled by it." As written, the agreement could allow AT&T to use the reservation process to systematically warehouse spare conduit and ROWs for its own benefit.

We concluded in the MCI Order "that access to poles, conduit, ducts and rights of way (ROW) shall be governed in accordance with 47 USC 251 (b) (4) (including sec 224 incorporated by reference therein) and 47 CFR Part 1 subpart J which implements § 224." In deciding Issue A.-11. we found, contrary to FCC rules, that Utah law deems all parties to this arbitration utilities, or alternatively, USWC cannot be excluded for purposes of § 224 from being defined a telecommunications carrier. On that basis, we conclude here that the reservation period for poles, conduit, ducts and ROW should be reciprocal, and we so modify the interconnection agreement.

We need not reach the issue of whether or not a reservation fee is fair to USWC and AT&T because we conclude it would be unfair to other competing carriers desiring access to the subject facilities. We find the language proposed by AT&T fraught with potential for future dispute surrounding determination of the reservation fee, and whether spare facilities represent excessive or unused inventory of USWC. More importantly, we find that AT&T's right of first refusal language discriminates against other carriers in a market with limited supply of the subject telecommunication facilities.

At the August technical conference the parties determined that counsel for USWC would within two weeks provide new negotiated language regarding AT&T/MCI's ability to reserve conduit space with USWC. USWC represented that a 20 day reservation may be reasonable in some circumstances. Insofar as negotiated language was never provided us, we could not consider it. We conclude that ¶ 47.4.10 as modified to provide reciprocity represents an efficient and fair mechanism for balancing the interests of the parties in conformance with state law.

For the foregoing reasons we order that the final interconnection agreement contain language proposed by AT&T/MCI as amended below, but without allowance for a reservation fee as proposed exclusively by AT&T, which we found discriminatory and strike as written below:

47.4.10 For the period beginning at the time of the Request and ending ninety (90) days following Confirmation, *either U S WEST or* AT&T/MCIm shall reserve such poles, ducts, conduit and ROW for *the other party* ~~AT&T/MCIm~~ and shall not allow any use thereof by any third Party, including the party providing Confirmation. ~~U S WEST.~~ The party requesting access ~~AT&T/MCIm~~ shall elect whether or not to accept such poles, ducts, conduit and ROW within the ninety (90) day period following Confirmation. AT&T/MCIm or US WEST may accept such facilities by sending written notice *to the party providing Confirmation.* ~~U S WEST~~ ("Acceptance"). ~~From the time of the Request pursuant to Section 47.4.9 above until ninety (90) days after Confirmation, U S WEST shall reserve any such requested poles, ducts, conduits and/or ROW for AT&T's use, provided, however, that if another party makes a bona fide request in writing to use any such requested poles, ducts, conduits and/or ROW, including U S WEST, U S WEST shall so inform AT&T. U S WEST shall not allow the requesting party, including itself, to use the requested poles, ducts, conduits and/or ROW without first giving AT&T the right to continue its reservation of such poles, ducts, conduits and/or ROW by paying U S WEST a reservation fee in an amount to be mutually agreed for the right to continue its reservation.~~

Issue A.-14. -- Audit Process - Examination

AT&T/MCI propose an "examination" process to supplement the comprehensive audit process described in ¶¶ 49.1 through 49.8. of the agreement. An examination provides an interim step between escalation and a comprehensive audit. USWC opposes the "examinations" provision and requests it be deleted. AT&T/MCI argue that liberal rights of examination and audit are crucial for successful implementation of and future compliance with the interconnection agreement. Examination rights and audit rights serve analogous purposes in AT&T/MCI's view except that the examination process is targeted at a specific issue and intended to be less costly and intrusive than a full audit. Absent a right to timely probe processes attendant to execution of the interconnection agreement, AT&T/MCI contend they will have no self-help verification method other than to pursue more expansive and costly formal audits and/or dispute resolution. Finally, AT&T represents that it compromised on this issue in accepting three audits per year (¶ 49.1) on the expectation examinations would be allowed, but that USWC then informed them that it opposed the examination provision.

USWC calls AT&T/MCI's proposed examination right a highly irregular business intrusion rife with competitive intelligence motives. USWC claims AT&T/MCI offer no legal argument to sanction such an intrusive measure and that an examination right is unusual for large commercial agreements. USWC worries that if other competitive local carriers are allowed an examination right under most favored nation provisions of the 1996 Act, company operations would be subjected to scores of examinations for real and perceived problems with services it provides.

We note that the examination right is reciprocal, narrowly targeted and limited in scope. In the MCI Order we ordered "development of contractual language addressing intercarrier audit rights for timely verification and validation of accounts payable to or receivable from either party." The agreed upon language in section 49 of the interconnection agreement rightfully extends the intent of that decision to include "records, accounts and processes which contain information related to the services provided and performance standards agreed to under this agreement." (¶ 49.2).

AT&T notes that upon entering interstate switched access arrangements with its former local operating companies in 1984, four annual audits were allowed. Insofar as AT&T/MCI's local entry entails a far larger and more complex set of purchase and sale transactions, upon which AT&T/MCI's Utah business reputation depends, we find that examinations represent an important and necessary interim mechanism to facilitate the orderly development of measures to evaluate performance of the terms and conditions of the interconnection agreement. We recognize that other carriers entering interconnection agreements with USWC may seek a similar right. For that reason, we find that AT&T/MCI, USWC and third parties should, to the extent possible, consolidate inquiries to optimize resources committed to the examination process.

Accordingly, we deny USWC's request that the examination language be deleted and order that AT&T/MCI's ¶ 49.9, which allows examination rights, be included in the final interconnection agreement as written below:

¶ 49.9 "Examination" shall mean an inquiry reasonably requested by either Party into specific elements or processes where the requesting Party raises a dispute concerning services performed by the other Party under this Agreement and such dispute has not been resolved through the escalation process described in this Agreement. Only that information that is necessary to resolve the dispute in issue must be provided in the course of an Examination and the total time involved in an Examination for each Party may not exceed three (3) people for three (3) days. Appropriate provisions of this Section 49 that apply to Audits shall also apply to Examinations, except that either Party may conduct only a total of nine (9) Examinations and Audits per year, with a maximum of three (3) Audits per year.

Issue A.-15. -- Directory Assistance (DA) - Monitoring of DA Calls; and,

Issue A.-18. -- Operator Services (OPS) - Call Monitoring

We consolidate the above issues for decision inasmuch as each party's proposed paragraphs 50.2.3.7 (Issue A.-15.) and 50.3.5 (Issue A.-18.) of the agreement conveys each party's central intent in separate but identical language applicable to monitoring of, respectively, directory assistance and operator handled calls. AT&T/MCI propose provisions for ¶¶ 50.2.3.7 and 50.3.5 allowing them to monitor the quality of DA and OPS provided by USWC using the same call monitoring techniques available to USWC, or, remote call monitoring practices typically used by businesses that outsource large-volume calling to call centers. USWC's proposed language for the same paragraphs would limit AT&T/MCI monitoring of DA and OPS service quality to test calls akin to that any end user could place to its DA and OPS centers.

AT&T/MCI argue they should be afforded an opportunity to inspect the quality of directory assistance and operator services provided their customers to verify that it is provided without discrimination and at parity with the service level USWC provides itself. Call monitoring of a third party vendor is standard carrier industry practice they claim. USWC argues that DA and OPS quality control is properly ascertained by test calls or "appropriate" call monitoring into DA centers. It worries that if other competing local exchange providers opt into the same interconnection agreement entered by AT&T/MCI and USWC, a potential exists for dozens of ongoing inspections.

At the August 15 technical conference, AT&T represented that it would provide USWC new language for Issues A.-15, A.-16 and A-18. Having no knowledge of whether that representation was fulfilled, we are left to evaluate language proposed by both parties for ¶¶ 50.2.3.7 and 50.3.5 of the interconnection agreement. Our evaluation is complicated by the fact that the record and the interconnection agreement are void of any substantive description of the types of DA and OPS monitoring activities contemplated by USWC. Both parties agree that DA shall be provided in accordance with USWC's internal standards and procedures which must comply with professional industry-accepted standards (¶ 50.2.3.3.).

Commission Rule R746-348-7 designates operator services and DA as essential services under UCA 54-8b-2.2. Operator handled call completion services are deemed ancillary to essential network functions by R746-348-6(A)(3) and must be made available by an incumbent under state and federal statutes. We attach fundamental importance to the idea that parity be established between the parties with respect to the manner and processes by which service quality is measured. For the above reasons, we conclude AT&T/MCI's proposed language for ¶¶ 50.2.3.7 and 50.3.5 of the final interconnection agreement will further that end more than USWC's. We order that the following AT&T/MCI language be included in the final interconnection agreement:

50.2.3.7 AT&T/MCIm shall participate in all call monitoring activities available to U S WEST and to remote call monitor as customarily practiced by the outsource customers of call centers.

50.3.5 AT&T/MCIm shall be permitted to participate in all call monitoring activities available to U S WEST and to remote call monitor as customarily practiced by the outsource customers of call centers.

Issue A.-16. -- Directory Assistance (DA) - Inspection of USWC's DA Offices

Issue A.-19. -- Operator Services (OPS) - Inspection of USWC Operator Centers

Issues A.-16 and A.-19 address an extension of the DA and OPS facility monitoring discussed above to include on-site inspection. AT&T/MCI unilaterally propose language allowing them a right to inspect USWC's DA and OPS centers which could be exercised upon 15 days' notice with USWC's consent, which could not be unreasonably withheld. The inspection right would also be contingent upon continued material violation of the DA and OPS provisions of the agreement as evidenced by results of AT&T/MCI's remote monitoring of DA and OPS centers.

USWC urges us to reject AT&T/MCI's proposed language noting that other reasonable means exist to ensure that the quality of USWC's DA services is preserved without compromising the competitive environment. USWC disputes AT&T/MCI's claim that customers who are also competitors commonly monitor one another, or that it is common practice in customer-supplier relationships within the industry to monitor the quality of such functions. USWC represents that AT&T agreed to third party monitoring in Idaho to mitigate its fear that marketing information could fall out of remote monitoring activity. Finally, USWC contends it could only agree to direct monitoring by AT&T/MCI subject to a collective bargaining agreement with its operators.

USWC produced no evidence that inspection would violate collective bargaining agreements. Nor did it produce evidence of the type of competitively sensitive market information that might be gleaned from remote monitoring. The efficacy of our decision on this issue is dependent on the decision reached in the preceding section. Although we decided there that AT&T/MCI should be allowed to remotely monitor service quality in DA and OPS centers, we decide here not to allow inspection of those centers. We so decide because we do not see that inspection will add appreciably to any showing demonstrating an agreement breach. We find that the parity value gained by allowing inspection is not sufficient to warrant the practice. We find that remote monitoring activity will produce sufficient evidence of service deviation for AT&T/MCI to seek redress to enforce the terms of the agreement. Having sufficient evidence of deviation in hand, many avenues of administrative procedure exist under law, by this agreement and by Commission rules for AT&T/MCI to seek enforcement of the agreement.

For the foregoing reasons we order that AT&T/MCI's proposed ¶¶ 50.2.3.7.1 and 50.3.5.1 be stricken from the final interconnection agreement:

~~50.2.3.7.1 In the event any material deviation is found to continue to occur as a result of such call monitoring and, after fifteen (15) days notice to U S WEST of such deviation, if the deviation continues to occur, upon mutual agreement, not to be unreasonably withheld, AT&T/MCIm or its designated representatives may inspect any U S WEST owned or sub-contracted office, which provides Directory Assistance services, upon two (2) days' notice to U S WEST.~~

~~50.3.5.1 In the event any material deviation is found to continue to occur as a result of such call monitoring and, after fifteen (15) days' notice to U S WEST of such deviation, if the deviation continues to occur, upon mutual agreement, not to be unreasonably withheld, AT&T/MCIm or its designated representatives may inspect any U S WEST owned or sub-contracted office, which provides Operator Services, upon two (2) days notice to U S WEST.~~

Issue A.-17. -- Operator Services - Instant Credit

The parties disagree in separate provisions proposed for ¶ 50.3.3.2.(o) of the agreement over whether or not AT&T/MCI should receive credit for the value of operator service credits issued upon request to their customers who are served by USWC's OPS facilities. Customer requests for credit are routinely issued by USWC for a myriad of reasons relating to poor quality, directory misinformation or for good will.

USWC is willing to offer credit to AT&T/MCI customers served by its OPS facilities. It would record a credit for AT&T/MCI customers in the same manner it does for its own customers and forward the information to AT&T/MCI in billing records. However, irrespective of whether or not the credit is issued, in USWC'S view AT&T/MCI would still be liable for the operator service provided on its behalf. USWC argues that the operator service has been provided AT&T/MCI at real cost to them for performing the service. Consequently, they refuse to flow back any credit issued, even if the operator or directory assistance service they provide is of poor quality. The charge to AT&T/MCI for the operator service, which is a TELRIC rate, is 36 cents for each local call to OPS.

AT&T/MCI want operator service credit given their customers to flow back to them on similar terms to the credits afforded by USWC to its own customers, whether the OPS is provided on a resale or unbundled element basis. They argue that the cost of credits is factored into the loaded cost of OPS during cost development. Issuing them to AT&T/MCI provides a remedy for a contractual non-performance.

Both parties attest to the existence of industry statistics about the frequency of consumer complaints regarding operator service and directory assistance, though neither party provides that evidence on the record. Left without empirical evidence enumerating the frequency of consumer complaints and a distribution of underlying causes, we rely on simple logic to find that most consumer requests for credit relate to misinformation provided during the customer transaction or impairment of the transaction with the OPS resource. Insofar as the parties failed to produce data forming a basis for decision, we order that AT&T/MCI customer requests for operator service credit be provided in the same manner USWC fulfills its own customer requests. The aggregate value of credits provided on AT&T/MCI's account shall be equally shared with USWC so that one half of the operator service credit will be refunded AT&T/MCI. We combine language provided by both parties to amend ¶ 50.3.3.2.(o) of the final interconnection agreement, as written below:

50.3.3.2 .(o) When requested by AT&T/MCIm, U S WEST shall provide instant credit on Operator Services calls on a non-discriminatory basis as provided to U S WEST Customers or shall inform AT&T/MCIm Customers to call a toll free number for AT&T/MCIm Customer service to request a credit. U S WEST shall provide one (1) toll free number for business Customers and another for residential Customers. A record of the request for credit and the amount of any credit actually issued by U S WEST shall be passed on to AT&T/MCIm through the AMA record. The aggregate value of any credit issued to an AT&T/MCIm Customer shall be shared equally by each Party. U S WEST shall in the normal course of billing issue AT&T/MCIm credit equal to 50% of the aggregate value of operator service and directory assistance credits issued by U S WEST on AT&T/MCIm's behalf.

Issue A.-20. -- Service Standards

USWC suggests its proposed service standards, as embodied in ¶ 52.2 through ¶ 52.6 of the interconnection agreement, respond to the AT&T and MCI Orders and the service parity standard embodied in § 251(c)(2)(C) of the 1996 Act. It urges us to reject AT&T/MCI's performance standards, reporting requirements and remedies insofar as they dictate "how U S WEST is to run its business without being compensated", and "go[es] far beyond what the Commission ordered, what the Act requires or what USWC provides itself or others". USWC avows to provide AT&T/MCI the same level of service it provides itself, its largest customer, any other CLEC and its end-users. USWC notes that AT&T/MCI can use the Bona Fide Request process [section 48] to seek a level of service USWC does not currently provide.

AT&T/MCI argue that the service standards they propose in ¶ 52.2 through ¶ 52.4 of the interconnection agreement are offered "pursuant to the direction of the Commission", and "for the purpose of imposing such performance standards as to ensure that each Party provides to the other the same level of service that it provides to its own customers". They assail USWC's performance measures for failing to meet the requirements of the AT&T and MCI Orders. They correctly allege that USWC standards represent only "measures" without "performance objectives or remedies" other than limited remedies available to AT&T/MCI in ¶ 52.3.

AT&T/MCI also correctly allege that USWC's performance measures do not ensure they will receive the same service quality USWC provides its largest customers. They complain that USWC has not provided them with its own internal performance measures and objectives making it almost impossible to determine the level of service USWC provides its largest customers.[(12)] There is no evidence on this record indicating what USWC's actual internal measures and performance objectives are in Utah. Finally, AT&T/MCI argue that the Commission avoids the issue of service quality parity required by §251(c)(2)(B) of the 1996 Act in the AT&T and MCI Orders and in the intercarrier service quality rulemaking.

We could not have been more straightforward in the MCI Order when we said: "We order the parties to develop interim quality of service performance specifications and a comparative quarterly reporting format showing whether or not interim performance objectives were achieved." In the same order we found that "US West should provide repair intervals not longer than that which it provides itself," and we instructed the parties "to develop interim measurements and periodic reporting mechanisms to monitor US West's maintenance and repair performance relative to its performance of maintenance and repair activity for AT&T." Our intent in ordering a comparative reporting format was to show how AT&T/MCI fared relative to USWC's achievement of its own service quality objectives.

We described our expectation regarding service standards, including measurement, reporting and compliance, in the AT&T and MCI Orders. We emphasized the relationship between intercarrier performance and real-time access by AT&T/MCI to USWC's legacy and newly re-engineered operations support systems (OSS) for facility provisioning and customer record information related to maintenance and troubleshooting of problems with wholesale, interconnection and unbundled element services. We ordered the parties "as a policy matter....to develop contractual instruments that will promote provisioning equity and efficiency with minimal customer confusion." We attempted early in the AT&T and MCI arbitrations to "operationalize parity" between the parties while intercarrier service quality rules were established. We attempted to induce competitive neutrality by directing that "parity of access to information about network elements should not disadvantage AT&T in developing and executing its business strategies during the transition to nationally standardized access methods for pre-ordering and ordering unbundled elements." Finally, we ordered USWC to provide AT&T/MCI "with the same service quality it provides its largest customers and any other CLEC".

During 1997 we convened several technical conferences under the aegis of an informally organized Joint Provisioning Team to consider issues related to intercarrier joint facilities planning and provisioning by USWC of sufficient trunking and switch port capacity to enable efficient [(13)]

interconnection, and alleviate blocking of traffic terminating on competitive providers' and USWC's networks. Paralleling that effort was an initiative launched in January, 1997 under the auspices of Docket No. 94-999-01 to achieve industry consensus on intercarrier service quality rules. That effort originated as a result of the AT&T arbitration and AT&T's advocacy therein of minimum performance standards and reporting requirements for inclusion in the interconnection agreement between itself and USWC.[(14)] We have engaged in a slow and deliberate process that recently culminated in the publication for comment of Commission Rule R746-365 - *Intercarrier Service Quality* that treats certain matters left unresolved by the Joint Provisioning Team, the ELI Petition and unilateral negotiations conducted between USWC and AT&T/MCI during the two years since passage of the 1996 Act.[(15)] Our authority to promulgate service quality rules is firmly rooted in federal and state law and expressly preserved by the 1996 Act.[(16)]

Though we believe AT&T/MCI's performance standards, reporting requirements and remedies better reflect the intent of federal and state law and our own intent as expressed in the AT&T and MCI Orders, we do not order inclusion of AT&T/MCI's proposed ¶ ¶ 52.2 and 52.3 due to the pendency of Proposed Rule R746-365. We note that AT&T/MCI contemplate that their proposed performance standards will be superseded by Commission rule. Having previously indicated our intention to defer consideration of AT&T's proposed service quality measurements to rulemaking and having here decided not to adopt AT&T/MCI's performance standards, we urge AT&T/MCI, to the extent service quality measures they advocate are not addressed in R746-365, to address them in comments in that rulemaking. We specifically encourage AT&T/MCI to produce evidence related to service quality measures for pre-ordering, provisioning, maintenance/repair, network performance, DA and OPS, and service quality remedies including per occurrence credits and liquidated damages.

With regard to the Supplier Performance Quality Management System (SPQMS) and Gap Closure process described in ¶ 52.4, we conclude it should be included in the final interconnection agreement. We find that the SPQMS and Gap Closure Plan represent a systematic and curative joint process aimed at performance improvement which we unconditionally endorse. For that reason, we order that AT&T/MCI's proposed ¶ 52.4, as modified to accommodate the effectiveness of superseding Commission rules, be included as written below:

52.4 Metrics and Gap Closure Plans

The metrics in this Attachment *or superseding Commission rule* are tracked and measured on a monthly basis. These monthly performance results are managed as part of the Supplier Performance Quality Management System (SPQMS).

SPQMS requires that when the monthly results do not meet the required performance levels described in this Attachment, Gap Closure Plans are implemented to improve performance. These Gap Closure Plans include:

- evaluation of the opportunity for continuous improvement, systems enhancements and re-engineering;
- forecasted improvement to the desired level of performance for each issue or initiative;
- evaluation of pertinent changes in periodic (monthly, weekly) results; and;
- a date for compliance with the expected performance.

The Gap Closure Plans will be reviewed monthly by AT&T, or more frequently as updated data and analysis are available. US WEST shall modify its Gap Closure Plans to accommodate AT&T's reasonable business concerns.

Issue 1.- 21. -- Resale - Volume and Term Discounts

Issue 2.- 26. -- Resale of Telecommunications Services

Issue 2.- 28. -- Resale - Promotions

Issue 2.- 30. -- Resale of Lifeline and Linkup

The Commission had not yet issued its October 24, 1997 Report and Order on Avoided Retail Costs in Docket No. 94-999-01 ("Phase 1 Order") at the time parties submitted briefs in this arbitration. The Phase 1 Order decided the four resale issues enumerated above and consolidated for decision in this order. The same arguments made by AT&T/MCI and USWC in the Phase 1 proceeding are made here and we do not reiterate them. USWC's argument that retail discounted services offered for the wholesale market are already wholesale services and therefore not subject to an incremental wholesale discount reflecting cost avoidance was rejected in the Phase 1 Order. We held in the Phase 1 Order that "[P]roper treatment of bundled, retail discounted and contract services turns on whether those services are construed as retail services under §251(c)(4)(A) of the 1996 Act....and are thus subject to the pricing standards enumerated in §252(d)(3)". We concluded there and do here that USWC has a duty pursuant to §251(c)(4) of the 1996 Act "to offer for resale at wholesale rates *any* telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers". We find that our duty, pursuant to §252(d)(3) of the Act, is to ensure that wholesale rates reflect the removal of costs "attributable to any marketing, billing, collection and other costs that will be avoided by the local exchange carrier".[(17)]

In the AT&T and MCI Orders we concluded that "under federal law all of USWC's telecommunications services retailed to end users must be made available for resale", and that any restriction on resale of USWC services comply with CFR 47 § 51.613. The Phase 1 Order acknowledged that there was no cause to reverse conclusions of law drawn in the AT&T and MCI Orders. Again, we find no cause here.

In accordance with conclusions drawn in our Phase 1 Order and the AT&T and MCI Orders, we direct the parties to include AT&T/MCI's proposed ¶ 2.11 addressing Issue 1. -21 in the final interconnection agreement:

2.11 Resale prices shall be wholesale rates determined on the basis of retail rates charged to subscribers for the Telecommunications Service requested, excluding the portion thereof attributable to any marketing, billing, collection and other costs that will be avoided by U S WEST, as specified in the Act, by the FCC and/or the Commission. U S WEST shall be obligated to offer its volume and term discount service plans to AT&T/MCIm provided that AT&T/MCIm complies with the volume and term requirements contained therein. If selected by AT&T/MCIm, an appropriate wholesale discount shall also be applied to such plans. With the exception of the preceding, AT&T/MCIm shall not be required to agree to volume or term commitments as a condition for obtaining Local Service.

In accordance with our Phase 1 Order and the AT&T and MCI Orders, we conclude that AT&T/MCI's proposed ¶ 1.2, which addresses Issue 2. -26., should not be stricken from the agreement as advocated by USWC. We find that private line services, contract services and volume discount services are retail services under § 251(c)(4) of the 1996 Act. AT&T/MCI's proposed ¶ 1.2 should therefore be retained in the final interconnection agreement:

1.2 U S WEST will also make the following services available for resale: residence basic exchange, Centrex Plus, Operator Services, Directory Assistance, Optional Calling Plans, Volume Discount Plans, Discounted Feature Packages, Private Line Transport, negotiated contract arrangements, Business Basic Exchange, PBX Trunks, Frame Relay Service, ISDN, listings, features, IntraLATA toll, ~~and~~ AIN services, and WATS. This list of services is neither all inclusive nor exclusive.

There is little if any disagreement and only a minor variance in language proposed by each party for ¶ 1.8 of the agreement which treats Issue 2.-28. We find AT&T/MCI's reference to a "wholesale" rather than a "resale" discount, as proposed by USWC, more consistent with FCC rules.[(18)] We therefore order that AT&T/MCI's proposed ¶ 1.8 be included in the final interconnection agreement:

1.8 Promotions of ninety (90) days or less need not be made available to AT&T/MCIm at the wholesale discount rate.

It was only indirectly that we reached the issue of resale of Lifeline and LinkUp service in the Phase 1 Order insofar as we required, consistent with the AT&T and MCI Orders, that resale restrictions be limited to those specified in CFR 47 § 51.613. We find cause here to reject as unreasonable USWC's claim that it make Lifeline and Link-Up available for resale to eligible customers "at no additional discount." We conclude, as did the FCC, that Lifeline and LinkUp are subject to the § 251 (c)(4) resale obligation absent a showing by USWC that its proposed restriction is reasonable.[(19)] USWC provided no such showing in this arbitration that its proposed restriction is reasonable or non-discriminatory. AT&T/MCI do not propose to purchase Lifeline and Link-Up at wholesale and then resell the services to any residential customer. Rather, resale of Lifeline/LinkUp would be limited only to those eligible and qualified to receive them from USWC, AT&T/MCI or another carrier. We conclude that governing law requires that USWC make Lifeline and Link-Up available at the residential wholesale discount rate. If the wholesale rate provides AT&T/MCI sufficient margin to retail Lifeline and Link-Up at a price lower than that charged by USWC we conclude that they may do so.

Accordingly, we order that AT&T/MCI's proposed ¶ 4.5.2 be included in the final interconnection agreement:

4.5.2. U S WEST shall offer for resale Lifeline and Link-Up Service; provided, however, that AT&T/MCIm may only resell Lifeline and Link-Up Service to those Customers eligible to receive such services. U S WEST will provide information about the certification process for the provisioning of Lifeline, Link-up, and similar services. U S WEST will forward to AT&T/MCIm, in electronic format (when available), information available to U S WEST regarding a subscriber's program eligibility, status and certification when a U S WEST subscriber currently on any U S WEST telephone assistance program changes service to AT&T/MCIm as their local exchange carrier. U S WEST will cooperate in obtaining any subsidy associated with a subscriber transfer to AT&T/MCIm.

Issue 1 - .22 -- Construction and Implementation Costs

USWC makes provision in proposed ¶ 3.1 of Attachment 1 to the agreement for use of existing tariffs to recover costs of special construction undertaken on behalf of AT&T/MCI. They argue that special construction tariffs represent prima facie evidence of customary industry practice. At the August 15 technical conference, USWC argued, correctly we believe, that the Eighth Circuit's rendering of § 251(c) means it is not obligated to construct facilities at AT&T/MCI's behest even if AT&T/MCI are willing to pay for it. USWC proposes to defer consideration of a competitor's request for special construction to the Bona Fide Request (BFR) process [section 48]. USWC also argues that by virtue of vacating CFR 47 51.305 (a) (4) and 51.311 (c), the Eighth Circuit held that § 251(c)(2)(C) requires them to only provide access to their existing network, not an unbuilt superior one.

AT&T/MCI create a nexus between USWC's ability to levy special construction tariffs on them and its ability to levy special construction charges on its own end users for similar construction. AT&T/MCI argue they should not be bound by monopolist special construction tariffs pre-dating the 1996 Act. If USWC or entrants coming in after AT&T/MCI benefit from special construction they paid for, then claim AT&T/MCI, they should receive a refund of a share of the sunk costs they paid in special construction tariffs, or, pursuant to a "request quote" for network elements or interconnection ordered under the BFR process.

In our Phase 1 Order in Docket No. 94-999-01, we ordered that resellers be assessed special construction charges pursuant to then-effective tariffed terms and conditions for line extension, facilities reinforcement or land developments. We concluded that any tariff charges so imposed should apply to resellers in the same manner special construction charges would apply to any similarly situated individual or group of USWC's retail customers. With regard to AT&T/MCI's purchase of unbundled network elements, we do not distinguish herein the basis for applicability of non-recurring special construction tariffs as opposed to the commercial transaction contemplated by the BFR process. We leave that to the express terms of special construction tariffs and circumstances attendant to specific situations requiring construction.

We disagree with USWC's contention that the Eighth Circuit decision would hold that the 1996 Act does not require it to provide access to a network superior to that it now operates. We conclude that §251(c)(3), which governs USWC's obligation to provide unbundled access to network elements, qualifies the whole cloth of § 251 by requiring that access to unbundled network elements be "in accordance with the requirements of this section and section 252". §252(e)(3) preserves our authority to establish and enforce requirements of state law in review of negotiated or arbitrated interconnection agreements under that section. Our efforts are thus guided by Utah telecommunications law, particularly the policy declarations enumerated in UCA 54-8b-1.1 requiring, for example, that new technology, an advanced infrastructure and economic growth attributable to telecommunications competition, not be inhibited.

We also disagree with the notion advanced by AT&T/MCI that tariffs predating passage of the 1996 Act have a bearing on payment for construction work performed today. That such tariffs were imposed in a monopoly environment is immaterial. We find incorrect AT&T/MCI's argument that USWC can effectively amend the terms of a private contract by unilaterally changing its tariffs without AT&T/MCI's consent. We view USWC's special construction tariffs as a public contract granting AT&T/MCI a right to complain under applicable Commission rules. Similarly, the BFR process allows parties to seek expedited resolution of a disputed construction quote.

We find reasonable AT&T/MCI's assertion that they receive a refund to reflect a prorata share of special construction costs previously paid USWC that subsequently benefit USWC or a third carrier. If another CLEC or USWC receive benefit from facilities initially constructed and dedicated for AT&T/MCI's exclusive use, AT&T/MCI should be compensated upon commencement of joint use, whether in the form of return of special construction charges paid, joint use tariffs or other meet point billing arrangement. We find this consistent with the spirit of ¶ 40.4.3 (b) of the interconnection agreement where subsequent collocators paying USWC's "training labor" rate element would trigger a refund from USWC to AT&T/MCI, as the initial collocator, of one-half of training expense paid to USWC by a third party collocator.

Accordingly, we order that ¶ 3.1 of the final interconnection agreement be modified so as to reflect AT&T/MCI's entitlement to a refund of a prorata portion of previously paid special construction charges incurred by AT&T/MCI for exclusive use of facilities which are subsequently shared by joint users or concurring carriers. We order that language proposed by both parties be consolidated for inclusion in the final interconnection agreement:

3.1 U S WEST shall perform construction for AT&T/MCIm for the services provided hereunder pursuant to and in accordance with the terms of U S WEST's retail and wholesale construction charge tariffs, as appropriate for the type of service provided. *Such construction charge tariffs shall be imposed* only if U S WEST assesses its own end users such charges for similar construction and also demonstrates to the Commission that it is customary industry practice to charge end users for similar costs. If another CLEC or U S WEST receives a benefit from the construction or other activity for which MCIm/AT&T is charged, MCIm/AT&T is entitled to recover contribution from the CLEC, or, if applicable, U S WEST as a beneficiary, for a share of the costs.

Issue 1. - .23 -- Unbundled Loop Conditioning Cost

USWC proposes language for ¶ 4.1 of the interconnection agreement that allows cost recovery for loop conditioning necessary to provide various digital subscriber line ("xDSL") services such as ISDN, IDSL, HDSL, ADSL, switched DS-1 and rate-adaptive DSL services. They argue that loop conditioning to provide those services is a costly and labor intensive exercise that should be borne by the requesting party. USWC argues that loop conditioning represents a cost it would otherwise not incur absent AT&T/MCI's request.

AT&T/MCI urge us to reject USWC's proposed ¶ 4.1 arguing that any conditioning charges attendant to providing xDSL on an unbundled loop are properly imposed on USWC. They argue, as USWC attested in Docket No. 95-049-T20 [In the Matter of USWC's Provision of ISDN], that a forward-looking, least-cost, most efficient network costing method would not consider costs for the removal of bridge tap and load coil. In AT&T/MCI's view, a forward-looking network would not contain loaded loops. Any loop conditioning liability imposed on them would thus be tantamount to their paying to upgrade USWC's network. AT&T/MCI recommend that the development of appropriate unbundled loop conditioning charges should be conducted in a subsequent Commission proceeding with participation of all interested parties.

We take seriously our statutory mandate to make emerging xDSL services available by multiple market providers. We find our authority to support technological advancement beyond voice grade bandwidth and to foster deployment of advanced telecommunications capability well-established in law.[(20)] Commission Rule R746-348-3(C) expressly contemplates competitor requests for USWC to provide loops conditioned to furnish DSL services. In our ISDN Order dated January 10, 1997 in Docket No. 95-049-T20, we drew conclusions from the record about the socioeconomic significance of a DSL. We found that USWC's internal policies or pricing strategies should not exert undue control over natural migration rates to other services as the public switched network evolves. We elaborate here that the intent of that statement was to inform USWC that we will not sanction any attempt, given their natural hegemony over existing public switched network assets, to bridle the deployment of DSL services by other providers. We perceive the existence of a local bandwidth bottleneck for thousands of residential and business end users. A competitive market for DSL services will economically satisfy the technological demand for high bandwidth services over standard loops.

There is no record evidence about cost variables that attend loop conditioning on a unit or aggregated basis. We are generally of the view that aggressive capital recovery provided over the past decade should obviate significant loop conditioning requirements. We know that loop length, bandwidth scalability requirements and the level of mechanization and systems integration in loop screening and qualification processes will substantially affect conditioning cost. For that reason, we find cause to examine various aspects of loop conditioning cost in Docket No. 94-999-01 (Phase III). Accordingly, we defer consideration of the issue here. We order USWC to condition loops at AT&T/MCI's request and to record and accumulate actual out-of-pocket costs associated therewith in a memorandum account. We order that USWC's proposed ¶ 4.2 be amended to reflect our decision in the final interconnection agreement:

4.2 To the extent AT&T/MCIm 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 *will be accrued at actual cost by USWC for each such loop. USWC's actual out-of-pocket costs to condition loops of varying lengths will be examined in Docket No. 94-999-01 (Phase III).*

Issue 1. - .24 -- Transport and Termination - Interim Prices

Each party proposes in section 5.1 of Attachment 1 (and appendices A and B thereto) substantially different terms, conditions and reciprocal compensation rates for transport and termination of local traffic mutually exchanged between their interconnected networks. Four substantive issues are raised, discussed and decided in the following sequence: first, whether reciprocal compensation for call transport and termination should be symmetrical; second, whether Internet traffic terminating on AT&T/MCI's network should be exempt from reciprocal compensation obligations; third, what reciprocal compensation method and cost basis should be used for interim pricing of unbundled network elements pending Commission adoption of an unbundled network element cost model and final local transport, termination and unbundled network element rates; and fourth, what features attach to the purchase of unbundled local switching as a network element.

AT&T/MCI assert that USWC's proposed ¶ 5.1.1.1.4 designating AT&T/MCI's first Utah switch as an end office switch is flawed because it results, contrary to FCC guidelines[(21)], in asymmetrical reciprocal compensation rates. Embedded in USWC's provision is a presumption that the AT&T/MCI switch is only the equivalent of an end-office switch and that its own switch is a tandem. As a consequence, absent direct trunked transport to USWC's end offices, AT&T/MCI would pay USWC local transport and termination charges representing the sum of the local switching, common transport and tandem switching rate elements. In contrast, USWC would pay AT&T/MCI, in equivalent terms, a far lesser amount comprised of local transport and switching charges for call termination.

§251(b)(5) of the 1996 Act mandates that all local exchange carriers establish reciprocal compensation for the transport and termination of telecommunications. §251(c)(2) imposes a duty only on USWC as an incumbent to allow AT&T/MCI to interconnect with its network at any technically feasible point in order to transmit and route telephone exchange service and exchange access service on non-discriminatory terms, conditions and rates. Similarly, UCA 54-8b-2.2(b)(ii) requires reciprocity of "access to and interconnection with essential facilities....on terms and conditions, including price, no less favorable than those the telecommunications corporation provides to itself". We concur with AT&T/MCI that rates for transport and termination should be reciprocally symmetrical insofar as AT&T/MCI's switch serves a dual tandem/end office function. We find that traffic terminated by USWC on AT&T/MCI's network should be compensated identically to the manner in which AT&T/MCI compensates USWC for local transport and termination on its network.

AT&T/MCI should not be penalized for deployment of a technologically superior network architecture configured to operate more efficiently than USWC's. We conclude that the public interest requires that we not inhibit or forgo the public benefit that attaches to deployment of emerging network architectures. We cannot sanction any claim by USWC for asymmetry in local transport and termination rates inasmuch as it has sole discretion to modernize or not modernize its assets. USWC chooses which transport and termination technologies to deploy, and indeed has a plan for switch consolidation. Several transport and multiplexing solutions exist for USWC to efficiently and vastly improve fiber transport capacity at optical carrier rates using SONET network elements and dense wave division multiplexing. For the foregoing reasons, we order that USWC's proposed ¶ 5.1.1.14. be stricken from the final interconnection agreement. Accordingly, interim local transport and termination rates shall be as currently specified in Appendix A to the interconnection agreement and each party shall be compensated reciprocally and symmetrically for traffic mutually exchanged.

USWC urges us to exclude traffic terminating to an Internet Service Provider ("ISP") served by AT&T/MCI from reciprocal compensation until the enhanced services provider exemption from interstate access charges is addressed by the FCC. USWC would capture calls routed to ISP telephone numbers in order to exclude that traffic from amounts billable by AT&T/MCI to USWC for terminating ISP traffic originating on USWC's network but terminating to an ISP served by AT&T/MCI. USWC alleges that arbitrage exists when its end users terminate calls to an ISP served by an AT&T/MCI switch to the degree minutes of use terminating to the ISP are largely unidirectional. AT&T represented at the August 15 technical conference that it would attempt to accommodate USWC's concern in revised language, however, this was never filed with the Commission.

We decline to adopt USWC's proposed ¶ 5.1.1.1.5 requiring that Internet traffic originating with or terminating to an ISP be exempt from reciprocal compensation. AT&T/MCI shall be entitled to reciprocal compensation for calls terminated to ISPs they serve. We conclude that such calls are at this time local to the degree they are exempt under federal rules from interstate access charges. We may revisit this decision if and when the FCC modifies the enhanced service provider exemption for ISPs.

AT&T/MCI allege that USWC's proposed language violates the 1996 Act and FCC rules insofar as it would impose non-cost-based switched access rates for call transport, transit and termination and unjustifiably classify AT&T/MCI's first switch as an end office switch. AT&T/MCI urge us to adopt "bill and keep" as the appropriate compensation mechanism to be used for transport and termination of local traffic between interconnecting carriers on an interim basis as long as such traffic is +/- 5% in balance. They allege that it would be unlawful to assess switched access rates for transport and termination of local calls, particularly when USWC acknowledges that its switched access rates are not cost-based. AT&T/MCI recommend that the appropriate method and rate level for reciprocal compensation be established in a future proceeding with participation of all interested parties.

USWC argues against bill and keep as the underlying basis for reciprocal compensation for local call transport and termination. USWC again raises an arbitrage argument asserting that bill and keep could provide incentive for AT&T/MCI to gain a cost advantage by target marketing businesses with heavy call volumes that would terminate on USWC's network. USWC asserts that it has the ability to measure local traffic attributable to interconnectors in a manner that will permit usage billing. That fact, USWC claims, obviates a common justification for bill and keep, i. e., that the cost of billing and measuring traffic is greater than the net billing differentials that result if parties measure and bill each other if and when traffic becomes +/-5% out of balance. Finally, USWC contends it could be potentially disadvantaged by bill and keep depending on where AT&T/MCI choose to locate points of interconnection with its network. USWC contends that AT&T/MCI's selection of interconnection points could burden transport and tandem switching facilities within its network without compensation from AT&T/MCI.

AT&T/MCI propose modifications to Appendix A to section 5.1 - *Interconnection and Resale Rates* which establish interim reciprocal compensation rates and several dozen recurring and non-recurring unbundled network element prices that have been uniformly set on the basis on USWC's costs, as amended to reflect Commission prescribed depreciation rates and rate of return, in prior interconnection agreements arbitrated by the Commission. AT&T/MCI propose to delete from Appendix A language effectuating a Commission decision to use USWC's switched access rates for call transport, termination and transit on an interim basis. AT&T/MCI would also delete from Appendix A interim Commission-established rates for DS-1 and DS-3 entrance facilities (both electrical and signaling) and a collocation quote preparation fee. AT&T/MCI propose to add to Appendix A a DS-0 direct trunked transport rate of $5.52 per DS-0 equivalent, a service control point port charge of $0.00082 per query and revised non-recurring customer transfer charges for various resale services categories. Under AT&T/MCI's proposed ¶ 5.1.1.3, the aforementioned elements in addition to any others utilized by AT&T/MCI in the provisioning of transport and termination of its customers calls, could be purchased separately or in combination based on prices derived from the Hatfield model.

We have established a process in Docket No. 94-999-01 to review cost information for unbundled elements comprising essential network facilities and services necessary for interconnection. We acknowledge that it is a slow and tedious process due to the number of network elements to be costed, the novelty of the total element long run incremental cost method and the complexity of the TELRIC models under consideration. We established resale policy and final wholesale discounts for resale services in our Phase 1 Order. We order the parties to incorporate the wholesale discounts set forth therein in Appendix B to section 5. We have revised the cost and interim price for an unbundled loop in a Phase 2 Order issued April 8, 1998 in Docket No. 94-999-01. Accordingly, we direct the parties to revise the unbundled loop rate in Appendix A. We are pursuing a deliberate path to establish final unbundled element costs and prices and before long will be selecting a cost model to use for that end. For the foregoing reasons we decline at this time to adopt AT&T/MCI proposed ¶ 5.1.1.3. insofar as it bases changes to Appendix A on costs established by the Hatfield model which we have yet to accept or reject. In summary, we reject all of AT&T/MCI's proposed deletions and additions to Appendix A inasmuch as those changes are not ripe for inclusion in Appendix A at this time due to the absence of cost evidence on this record, and the pendency of the Docket No. 94-999-01 cost proceeding.

AT&T/MCI propose in Appendix B to section 5.1 that USWC should be bound by a nondiscriminatory standard in establishing the terms, conditions and prices for nonregulated services which fall within the penumbra of the Agreement. In response to AT&T/MCI's choice of words, we clarify that in our view there is no "penumbra". We concluded in the Phase 1 Order that under federal and state law "all of USWC's telecommunications services retailed to end users must be made available for resale." Similarly, a competitive entry strategy founded upon use of essential unbundled network facilities should not be unduly restrained by virtue of regulatory treatment of services provided by those essential facilities. If a network element is used by USWC or an affiliate in delivery of a public service, it is straightforward to us that it be available to AT&T/MCI to provide the same or a different service.

AT&T/MCI's proposed ¶ 5.1.1.4 would allow for switching to be purchased on a per-line basis with all functionality and features of the switch included, including call routing. AT&T/MCI argue that USWC's proposed amendment to Appendix A (captioned as section 1), which separately itemizes prices for switch features, is contrary to FCC rules and the AT&T Order. We agree that USWC's proposal is contrary to the conclusion drawn in the AT&T Order where we found that "US West's offering of unbundled local switching capability to AT&T shall include vertical features in accordance with CFR § 319 (c)" .[(22)] There is no cause on this record to reverse our prior conclusion to include all vertical features and switch features in the switching element. We therefore order that USWC's proposed amendment (section 1) to Appendix A be deleted from the final interconnection agreement and that AT&T/MCI's proposed ¶ 5.1.1.4. be included.

Provisions incorporating the decisions made above are memorialized below. We order that no modification be made at this time to Appendix A and that AT&T/MCI's proposed amendment to Appendix B be included in the final interconnection agreement. Having decided the open subsidiary issues associated with interim transport and termination prices, we combine portions of each party's proposed section 5.1 and order that the following language, as amended, be included in the final interconnection agreement.

Rate Structure

5.1.1 Local Traffic - Interim Methodology

5.1.1.1 Call Termination

5.1.1.1.1 The Parties agree that call termination rates as described in Schedule 1, Appendix A to this Attachment 1 will apply reciprocally for the termination of EAS/Local traffic per minute of use. If the exchange of EAS/Local traffic between the Parties is within +/- 5% of balance (as measured monthly), the Parties agree that their respective call termination charges will offset one another, and no compensation will be paid. The Parties agree to perform monthly joint traffic audits, based upon mutually agreeable measurement criteria and auditing standards. In the event that the exchange of traffic is not in balance as described above, the call termination charges in Appendix A will apply.

5.1.1.1.2 For traffic terminated at an USWC or AT&T/MCIm end office, the end office call termination rate in Appendix A shall apply.

5.1.1.1.3 For traffic terminated at a USWC or AT&T/MCIm tandem switch, the tandem switched rate and the tandem transport rate in Appendix A shall apply in addition to the end office call termination rate described above.

AT&T/MCI Proposed Language

~~5.1.1.3 Prices for the unbundled network elements utilized by MCIm/AT&T in the provisioning of transport and termination of its customers calls shall be in accordance with the Hatfield model and as outlined in Schedule A hereto.~~

5.1.1.4 Switching shall be purchased on a per line basis with all functionality and features of such switch including, but not limited to call routing.

5.1.1.5 All other unbundled network elements may be purchased separately or in combination on the basis outlined in Schedule A.

~~5.1.1.1.4 The Parties acknowledge that AT&T/MCIm will initially serve all of its customers within a given LATA through a single AT&T/MCIm switch. The Parties also acknowledge that AT&T/MCIm may, in the future, deploy additional switches in each LATA. For purposes of call termination, the initial AT&T/MCIm switch shall be treated as an end office switch.~~

~~5.1.1.1.5 For purposes of call termination, this Agreement recognizes the unique status of traffic originated by and terminated to enhanced service providers. These parties have historically been subject to an access charge exemption by the FCC which permits the use of Basic Exchange Telecommunications Service as a substitute for Switched Access Service. Until any reform affecting enhanced service providers is accomplished, the Parties agree to exempt traffic originated to and terminated by enhanced service providers from the reciprocal compensation arrangements of this Agreement.~~

5.1.2 Transport

5.1.2.1 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.~~

5.1.2.2 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.

5.1.2.3 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.

5.1.2.4 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.

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

5.1.3 Toll Traffic.

Applicable Switched Access Tariff rates, terms, and conditions apply to toll traffic routed to an access tandem, or directly to an end office.

5.1.4 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.

Issue 2. - .25 -- Resale to Other Resellers

AT&T/MCI propose language in ¶ 1.1 of Attachment 2 that would allow them to resell service purchased at wholesale from USWC to other resellers. Arguing that their provision is consistent with the Act and FCC rules which deem resale restrictions presumptively unreasonable, AT&T/MCI claim that USWC would suffer no harm so long as a reseller AT&T/MCI resells USWC's services to abides by any resale restriction we find cause to impose. AT&T/MCI cite two adverse consequences that would result if USWC is the sole source of wholesale supply; first, AT&T/MCI will not combine USWC's resold services with their own services for resale in packaged service offerings, and secondly and contrary to the intent of the Act, USWC would face less competitive pressure from other telecommunications service providers. Though AT&T/MCI say their proposed language is unnecessary because the Act places no restriction on the resale of resold services, they desire to remove any uncertainty that would adversely affect their marketing plans or customer relationships.

USWC argues that AT&T/MCI's proposal is untimely insofar as it represents a new issue never presented in their Petitions for Arbitration or during the arbitration hearings. USWC correctly asserts that under the 1996 Act, only those issues raised in the petition and answer may be arbitrated. USWC alleges that AT&T/MCI merely want to traffic in services as a competitive ploy, thereby imposing burdensome and expensive conditions on USWC for an activity it asserts is not contemplated by the 1996 Act.

While we have not yet entered the 30 day statutory review period prescribed by §252(e)(4) of the 1996 Act, negotiation between the parties in these arbitrations have been ongoing for fifteen months. Secondary market resale by a reseller purchasing wholesale service from an incumbent carrier did not arise as an unresolved issue until the interconnection agreement was filed on June 27, 1997. We find that we are bound under §252(a) to consider and resolve open issues contained in the respective petitions of AT&T and MCI and USWC's response thereto which were filed in 1996. We conclude that the subject issue was not timely raised and we refuse to consider it herein. The record in this arbitration is insufficient to pass judgement on the legal and policy merits of a secondary resale market largely dependent on USWC for supply. We find nothing to prevent AT&T/MCI from packaging a bundled service offering which includes a wholesale exchange service component purchased from USWC. To the degree AT&T/MCI's business strategy is harmed by our decision, we urge them to seek redress through normal administrative means. We conclude, given the limited argument and record evidence regarding this issue, that AT&T/MCI's addition to ¶ 1.1 of Attachment 2 should at this time be stricken from the final interconnection agreement:

1.1 AT&T/MCIm may resell to any and all classes of end-users Telecommunications Services obtained from U S WEST under this Agreement, except for Centrex and Lifeline Assistance/Link-Up (or similar) services, which AT&T/MCIm may only resell to those subscribers who are eligible for such services. U S WEST will not prohibit, nor impose unreasonable or discriminatory conditions or limitations on the resale of its Telecommunications Services. AT&T/MCIm may not resell residential service to business customers, and business service may not be resold to residential customers. ~~The foregoing shall permit the resale of Telecommunications Services to another Reseller.~~

Issue 2. - .27 -- Resale of Inside Wire Maintenance and Enhanced Services

USWC and AT&T/MCI separately propose language for ¶ 1.5 of Attachment 2 to the interconnection agreement which relates to whether or not USWC must make unregulated voice mail and inside wire maintenance services available for resale. USWC argues that it has no legal obligation to offer those services for resale even when AT&T/MCI are willing to purchase them at retail rates. USWC asserts it has made a business decision to not incur the expense of providing AT&T with inside wire maintenance at the retail rate. It now claims it will not make the service available at any price.

AT&T/MCI's ¶ 1.5 would require USWC to make voice mail and inside wire services available for purchase on the same terms and conditions and for the same retail price that those services are available to any end user.[(23)] AT&T/MCI would then resell the services to their customers. AT&T/MCI argue that the absence of voice messaging resale constitutes an entry barrier which inhibits consumers from changing carriers because voice mail is intensely intertwined with consumer expectations of a complete telecommunications service. MCI asserts it has found in other markets that it cannot successfully market a voice mail customer if it can't provide the service.

In the AT&T and MCI Orders we ruled that USWC was not required to make available as a wholesale offering non-regulated enhanced services such as voice messaging service or inside wire maintenance services because alternative sources of market supply exist. We found that AT&T/MCI could self-provision or outsource those services to other providers. We note that the issue was not broached in an extensive record developed in Phase 1 of Docket No. 94-999-091.

While we were compelled by AT&T/MCI's most recent argument to re-examine our prior decision, we conclude that we lack cause to reverse it. Public utilities have a duty pursuant to UCA 54-3-7 not to "extend to any person...any facility or privilege...except as regularly and uniformly extended to all corporations". Similarly, UCA 54-3-8 forbids extension of preferences in "service, facilities or in any other respect". Notwithstanding those statutes, we conclude that our decision turns on whether or not inside wire maintenance and voice mail are deemed "essential facilities and services", as defined in UCA 54-8b-2.1. We previously concluded and now affirm that they are not. Neither service rises to the level of being essential insofar as they can be reasonably duplicated, are not necessary for AT&T/MCI to provide public telecommunications services, and represent services for which economic alternatives exist in terms of quality, quantity and price. We conclude that USWC's proposed ¶ 1.5 of Attachment 2 should be included in the final interconnection agreement:

1.5 Voice mail and inside wire and other non-regulated enhanced services are not available for resale.

Issue 2. - .29 -- IntraLATA Presubscription

AT&T/MCI's proposed ¶ 3.4 would require USWC to provide presubscription services for intraLATA and interLATA toll service in accordance with accepted industry practice. USWC urges that we not preempt in this arbitration the orderly investigation of issues surrounding USWC's provision of intraLATA presubscription being conducted in Docket No. 97-999-01, captioned In the Matter of Investigation by the Public Service Commission to Examine Promulgation of a Rule Instituting 1+ Equal Access to Intrastate IntraLATA Toll Markets.

At the time briefs were submitted in this case, we had not yet concluded Docket No. 97-999-01. That proceeding was initiated pursuant to UCA 54-8b-2.2(3) and culminated in promulgation of Commission Rule R746-356 entitled Intrastate (IntraLATA) Equal Access To Toll Calling Services By Telecommunications Carriers, which became effective December 30, 1997. Insofar as R747-356 squarely treats the subject matter of Issue 2.-.29, we consider the matter closed for purposes of this order. USWC has filed an equal access implementation plan in accordance with the rule and we expect equal access for carriers and dialing parity for consumers to ensue in accordance with the time frames specified in R747-356.

Accordingly, we order that AT&T/MCI's proposed ¶ 3.4, which comports with our expectation, be retained in the final interconnection agreement:

3.4 U S WEST will provide presubscription services for intraLATA and interLATA toll services in accordance with currently accepted methods and procedures, as ordered in Docket No. 98-049-05.

Issue 3. - .31 -- Shared Transport

Issue 7. - .39 -- Unbundled Network Element Platform

At issue is whether the law requires USWC to make available a platform of combined network elements, defined in this instance as a single network element comprising shared interoffice facilities, which could be disaggregated into multiple network elements available for individual purchase by AT&T/MCI. Shared transport is defined as direct trunk facilities and associated transmission routing information for telecommunications carried between USWC end offices within a local calling area. In its Shared Transport Order, the FCC defined it as "interoffice transmission facilities shared between the incumbent LEC and one or more requesting carriers or customers, that connects end office switches, end office switches and tandem switches, or tandem switches, in the incumbent LEC's network." The order affirms a conclusion the FCC reached in its Local Interconnection Order that "incumbent LECs are obligated under section 251(d)(2) to provide access to shared transport....as an unbundled network element." The FCC concluded that restrictions on access to shared transport facilities "would impose unnecessary costs on new entrants without any corresponding, direct benefits." The primary issue we decide is whether USWC must allow AT&T/MCI access to the same local interoffice facilities used to transport it's own traffic between central offices.

The term shared transport nominally camouflages the divergent perspectives embraced by each party's proposed single ¶ 5 of Attachment 3 to the interconnection agreement. The weight the parties and the industry attach to this issue make it the most significant we decide in this case. The record evidences polar interpretations by USWC and AT&T/MCI of the FCC's Shared Transport Order and the Eighth Circuit Decisions. AT&T/MCI claim that USWC must by law provide unbundled access to shared interoffice transport facilities, while USWC advances that AT&T/MCI seek to impose obligations upon it that have no basis in the Act. As noted, both parties filed Supplemental Briefs following issuance of the above decisions which argue their perspective on shared transport and recombination, or rebundling, of unbundled network elements. Much of the debate between incumbents and interexchange carriers on shared transport and Issue 7. -39, Unbundled Network Element Platform (All Network Elements in Combination), centers on the Eighth Circuit's failure to vacate FCC rule 47 C.F.R. § 51.315(b) which provides that: "Except upon request, an incumbent LEC shall not separate requested network elements that the incumbent LEC currently combines."

USWC urges us to modify the interconnection agreement with AT&T/MCI to delete any language purporting to require USWC to combine or recombine network elements for the benefit of AT&T/MCI, even if those elements are already "combined" in USWC's network. USWC proposes to delete all reference in the agreement to "combinations" noting in a footnote that "a search of the proposed contract ...reveals that the words "combine" or "combination" is used 34 times, 8 of which do not...relate to the issue of shared transport or recombination of network elements." USWC avows that its proposal conforms with the Act and FCC rules requiring that access to its central offices be on dedicated[(24)] as opposed to shared common transport[(25)] links. In USWC's view, switching and interoffice transport cannot be combined to form shared transport. USWC argues that shared transport inherently requires the combination of transport with switching functionality so that a carriers traffic is not separated and delivered to carrier-specific facilities controlled by individual interexchange carriers, as is done with common transport available in USWC's switched access tariff. Said another way, USWC argues that defining unbundled local switching to include shared trunk ports would effectively fail to unbundle local switching from transport.

USWC contends that shared transport is not a network element which it defines as a facility or equipment that "must be unbundled"and "must be able to stand alone." The network, USWC contends, is never actively or logically "combined" in any inherent or permanent manner, citing as an example "hundreds of unbundled network elements" comprising the local interoffice network in the Salt Lake City local calling area, all and each of which are available to AT&T/MCI in the interconnection agreement as unbundled network elements. USWC claims its network is made up of dedicated interoffice transport facilities, multiplexers, switch trunk ports and call routing all of which are only momentarily "combined" to route a particular call.[(26)] AT&T/MCI'S use of the term "shared transport facilitates", according to USWC, would not involve a discrete, identifiable component of the network, but rather a complex aggregation of network elements that combine to form a "service" that delivers telecommunications through alternative paths based on route availability at any given moment.[(27)] Finally, USWC claims that routing tables in its tandem switches are functionally not severable from its interoffice transport routes.

USWC's position, in summary, is that transmission facilities between its end offices are not shared facilities it must make available to AT&T/MCI as common transport links connecting its end offices within a local calling area. Rather, USWC considers its interoffice facilities dedicated exclusively to carriage of only its own traffic between those end offices. In order to obtain a feature, function or capability as a network element, AT&T/MCI must order a discrete facility or equipment from USWC for a period of time. USWC claims that proposition will not inhibit AT&T/MCI's provision of local telecommunications service.

To the degree AT&T/MCI seek a preassembled platform ready to provide finished service, USWC responds that resale services already provide a full service local offering. USWC coins the phrase "sham unbundling" to describe the notion that AT&T/MCI's purchase of a combined platform of unbundled network elements in lieu of purchasing an assembled wholesale service would be an "utter sham". AT&T/MCI seek to have USWC combine the network elements necessary to provide local exchange service into a platform for purchase at a price established by a forward looking cost model that is less than the "avoided retail cost" standard used to establish wholesale prices, according to USWC. USWC avers that AT&T/MCI will benefit from the dual entry strategies of using both resale and a package of unbundled network elements without incurring the corresponding and variable risk attached to each entry strategy.

The Eighth Circuit held that the proper standard used to determine which elements must be unbundled is the "necessary and impairment" standard. The Court acknowledged higher capital and business risk associated with a facilities-based entry strategy premised on use of unbundled network elements relative to a resale entry strategy. On that basis, USWC urges us to revise the interconnection agreement to delete any provision which purports to shift business risk and up-front investment associated with entry. Business risk, according to USWC, should not be shifted to it but rather must be incurred by AT&T/MCI unless they seek to mitigate risk by entering the market as a reseller. Like an incumbent, if a CLEC wants to be a facilities-based provider, even if exclusively through the use of unbundled elements, USWC argues that the CLEC "must make an up-front investment in all elements of the network (end-office to tandem trunks, end-office to end-office trunks, local switching, tandem switching, etc.) without knowing whether demand will be sufficient to cover the cost" of its business plan. USWC asserts that is not an improper "impairment" of service.

AT&T/MCI seek to use USWC's end-office to end-office trunks in the same manner USWC uses them.[(28)]

Their proposed ¶ 5 would require USWC to share all network elements comprising local interoffice network facilities in a manner incorporating existing efficiencies in switching and routing configurations. AT&T/MCI claim network traffic flows would maintain much of the same path and volume as today with shared facilities. AT&T/MCI proffer to purchase USWC's local interoffice transport network as a platform at local interconnection rates that, like common transport, are usage[(29)] and distance-sensitive and determined by either the Hatfield model or USWC's cost model.

AT&T/MCI explain that USWC's proposal would leave them two undesirable traffic routing options. First, AT&T/MCI could route traffic between end offices using common transport in a switched access context where interoffice facilities are shared only between an AT&T/MCI end office and USWC's tandem. AT&T/MCI would incur tandem transmission and switching charges inasmuch as all their customer traffic would pass through USWC tandems, while USWC's traffic would not incur those charges because it would be routed over direct interoffice trunks. The second option is that AT&T/MCI could build, lease or purchase dedicated transmission facilities between their switch and USWC end offices, and the offices of competing carriers. AT&T/MCI argue that would require them to buy direct dedicated transport between dozens of USWC end offices, thereby replicating USWC's interoffice trunking network, a prospect AT&T/MCI say constitutes construction of a "shadow network" between USWC end offices. AT&T/MCI assert such a duplication of trunking already in place would not be economically viable. They contend both options are patently discriminatory and would prevent AT&T/MCI from effectively competing for local service customers. AT&T/MCI conclude that USWC's position is inefficient, discriminatory and creates a barrier to market entry that would substantially and artificially increase the cost of competitive entry in violation of the Act.

Exacerbating the inequity of USWC's first proposed option, in AT&T/MCI's view, is the deleterious effect on transmission quality that would result if AT&T/MCI's traffic is shunted to a bottlenecked switch. USWC acknowledges problems provisioning adequate switch port capacity and trunking in and out of their tandems. The absence of such capacity has contributed to blockage of calls terminating to ELI and NextLink[(30)]

. Requiring AT&T/MCI to route through the tandem places an additional burden on interoffice routes and tandem switches, thus increasing the likelihood of interoffice call blocking, a minor problem now in comparison to the blocking that would occur if all AT&T/MCI traffic were tandem-routed. AT&T/MCI assert that customers would invariably encounter service delays, interruptions and blocked calls associated with USWC's inability to handle competitor traffic flows.

As with the manner in which parties use the term common transport, the absence of consensus about the meaning of other defined terms causes confusion in their application. We refer below to the definitions of network element, unbundling and shared interoffice facilities, and clarify our reading of their meaning.

The Eighth Circuit affirmed both the FCC's authority to define unbundled network elements under §251(c)(3), and the network elements so defined. The Court upheld FCC rules codified in 47 CFR § 319 which itemize and define seven unbundled network elements incumbent LECs must make available, including interoffice facilities. It concluded the rules were reasonable and entitled to deference. The Court further concluded that an entrant had the right to "achieve the capability to provide telecommunications service completely through access to unbundled elements". And, importantly to this decision, it adopted the FCC's view that network elements include the functionality of the facilities and equipment that make up an incumbent's network.

USWC argues that AT&T/MCI's use of the term "shared facilities" is not consistent with the FCC's "interoffice transmission facilities" definition. The FCC defines interoffice transmission facilities in 47 C.F.R. §51.319(d)(1) as "incumbent LEC transmission facilities dedicated to a particular customer or carrier, or shared by more than one customer or carrier, that provide telecommunications between wire centers owned by incumbent LECs or requesting telecommunications carriers." Following subsections of §319(d) require the incumbent LEC to provide a requesting carrier: (i) either "exclusive use" of dedicated interoffice facilities, or, alternatively, "use of the features, functions, and capabilities of interoffice transmission facilities shared by more than one customer or carrier"; (ii) all transmission facilities, features, functions and capabilities that attach to interoffice transmission facilities; (iii) connection to the facilities; and, (iv) the functionality provided by the incumbent's digital cross-connect systems in the same manner that the incumbent provides such functionality to interexchange carriers.

USWC argues that the definition of network element in the 1996 Act and FCC rules does not support an interpretation that a requesting carrier can purchase undifferentiated access to network capabilities. We disagree. Shared transport is differentiated by the codification of statutory intent in state and federal rules. The 1996 Act defines "network element" as a "facility or equipment used in the provision of a telecommunications service" including "features, functions and capabilities that are provided by means of such facility or equipment....or used in the transmission, routing or other provision of a telecommunications service". Similarly, Commission Rule R746-348-2 defines network element to mean the "features, functions and capabilities of network facilities and equipment used to transmit, route, bill or otherwise provide public telecommunications services". The same rule defines "unbundling" to mean the "disaggregation of facilities and functions into multiple network elements and services that can be individually purchased by a competing public telecommunications service provider". We find that both federal and state definitions of network element expressly recognize transmission and routing as implicit network functions included in the definitions of "interoffice facilities" and "network elements" subject to unbundling. We find that the functionality and capability of network elements is subsumed in the plain meaning of how they are defined. We conclude that the network functions of transmission and routing cannot be divorced from the transport link over which a call travels.

It is clearly not the intent of UCA 54-8b-2 that AT&T/MCI be left with what we find are two inferior options for traffic routing, i.e., dedicated links replicating USWC's network or common transport links with tandem-routing. In defining common transport links, Commission Rule R746-348-2 contemplates applicability to local interconnection as opposed to switched access, insofar as the term does not expressly exclude local end office to end office routes. While the rule acknowledges the prevalent definition of common transport generally associated with switched access, which encompasses tandem-routing, it does not define common transport to exclusively require end office to tandem routing. That non-exclusivity requires that we consider local end office to end office routing outside of a switched access context. We find cause to distinguish exchange access from local interconnection for purposes of providing common transport links. We find the definition of common and dedicated links permissively allows purchase of individual or combined network elements from a pool of disaggregated elements used to transport and route telecommunications over facilities that may be either common or dedicated. We conclude that the disaggregation inherent in the definition of unbundling goes to the pricing and availability of a network element rather than to whether or not a facility can be further separated into discrete network functions dedicated for exclusive use.(31)

In determining what network elements are to be made available under §251(c)(3), §251 (d)(2) (B) of the 1996 Act requires the FCC to consider whether "the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services it seeks to offer". In addressing shared transport in its Local Competition Order, the FCC found that a §251(d)(2) competitive "impairment" would occur if a failure to grant access to an unbundled element would increase the cost or decrease the service quality of market entry. The FCC concluded that §251(d)(2)(B) "requires incumbent LECs to provide access to shared interoffice facilities and dedicated interoffice facilities ...between an incumbent's end offices, new entrant's switching offices and LEC switching offices and digital cross connects." We reach the same conclusion in interpreting the intent of §251(d)(2) of the Act, UCA 54-8b-2.2(1)(c) and our own interconnection rules. We conclude that if AT&T/MCI are denied access to shared transport, their ability to provide the services they seek to offer would be impaired. The impairment arises as a result of the unduly prejudicial method of routing and transport offered them relative to the method USWC uses to route and transport its own traffic.

We conclude that AT&T/MCI should be able to share common transport routes including end office to end office links that predominantly carry USWC traffic. We find that the cost burden associated with both the tandem and dedicated transmission options violates Section 251(d)(2)(B) of the 1996 Act, as codified in 47 CFR 51.309(a).(32)

We find that tandem transmission would discriminatorily consign AT&T/MCI's traffic to a more costly transmission path with intermediary switching. We find evidence that tandem routing AT&T/MCI's traffic is likely to decrease the quality of interconnection and exacerbate call blocking. Alternatively, if transport and routing facilities are dedicated for AT&T/MCI's exclusive use, the financial and administrative cost would be greater than the cost of facilities shared by multiple joint users, including USWC. We conclude that arrangement would be contrary to law. In both instances we find the interconnection service to be discriminatory, inefficient and contrary to UCA 54-8b-2.2(1)(b)(ii) and 251(c)(3) of the 1996 Act.

We have found that local interoffice calls should be routed in parity with USWC's call routing in part because federal and state law explicitly prescribe a policy of non-discrimination. The 1996 Act unambiguously states at § 251(c)(2)(C) that USWC must provide interconnection for transmission and routing of telephone exchange service and exchange access that is "at least equal in quality to that provided by the local exchange carrier to itself".(33) §252(c)(1) mandates that we uphold that standard in deciding the shared transport issue. UCA 54-8b-2.2(1)(b)(ii) requires that interconnection be provided on "terms and conditions, including price, no less favorable than those the telecommunications corporation provides to itself". USWC acknowledges it is required by law to offer AT&T/MCI service at least equal in quality to that which it provides itself and its customers. In summary, we conclude, as did the FCC but for Utah-specific reasons, that denying AT&T/MCI use of USWC's local interoffice network would be discriminatory and violate the above statutes because it would artificially increase AT&T/MCI's cost to provide public telecommunications services.

We find no cause at present to elevate USWC's claim that AT&T/MCI will sham unbundle by arbitraging different pricing standards for unbundled network elements and wholesale services. We have not yet set final prices for unbundled network elements. The TELRIC of switching and transport will be examined in Phase 3 of Docket No. 94-999-01. At present, finished retail products purchased from USWC at wholesale discounts reflecting avoided retail cost are priced substantially less than the sum price for an equivalent combination of network elements purchased from interim unbundled element price schedules. There is no evidence of price distortions between avoided cost discounts and unbundled network element prices that create the arbitrage opportunity advanced by USWC.

USWC cites §271(c)(2)(B)(v) of the 1996 Act, which defines the fourteen point checklist for Bell company entry into in-region interstate toll services, in support of the notion that a network element must be able to stand alone and that shared transport causes trunk ports and transport to be combined. We find that singular reference misplaced and taken out of context because it is conditioned on the incumbent's compliance with §§251(c)(3) and 252(d)(1). We find the "unbundled from switching" reference in §271(c)(2)(B) (v) to be permissive and to refer to the availability of the network element. We conclude that the section is not intended to obviate shared transport. Quite to the contrary, we conclude that the plain language of § 251(c)(3) imposes on USWC a "duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis...in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service."

USWC argues that the Eighth Circuit Decision would hold that upon receipt of an order for shared transport, USWC could sever existing connections between elements and require AT&T/MCI to undertake the task of reconnecting those elements.[(34)] AT&T/MCI maintain that USWC's position would circumvent the clear requirement of 47 CFR 51.315(b) that it leave in place network elements that are already combined. In its Shared Transport Order, the FCC ruled that "dismantling of network elements, absent an affirmative request, would increase the costs of requesting carriers and delay their entry into the local exchange market, without serving any apparent public benefit". AT&T/MCI rightfully assert that when they order elements that are ordinarily and actually combined within USWC's network, USWC does not need to undertake any physical disconnection or connection activities within that combination to fulfill the order. AT&T/MCI point to the Court's distinction between recombining elements not ordinarily combined and keeping combined elements ordinarily combined, a point we find compelling.

Acknowledging that the Eighth Circuit Decision did not address C.F.R. § 51.315(b) in its decision, USWC asserts that does not imply that it intended to uphold it.[(35)] USWC insists that the Eighth Circuit held that the duty of combining unbundled network elements rests squarely on the requesting carrier. It strains credulity, according to USWC, to contend that the Court's failure to vacate §51.315(b) overrides its carefully reasoned holding that USWC cannot be forced to combine network elements for AT&T/MCI[(36)]

. USWC asserts that 51.315(b) was retained to prohibit an incumbent LEC from disassembling network elements into smaller, sub-elements, perhaps defined by a state commission, in a manner that would circumvent the intent of an FCC-defined network element.

We earlier noted that the Eighth Circuit's treatment of 47 CFR 51.315 has polarized perceptions about the intent of the Court's decisions. The Eighth Circuit did not vacate § 51.315(b), which prohibits an incumbent from uncombining network elements if the requesting carrier seeks to purchase them as currently combined. It did vacate 47 CFR 51.315 (c) - (f) which addresses recombinations of network elements not ordinarily combined in the ILEC's existing network. We conclude that by leaving 47 CFR 51.315 (a) and (b) intact when they considered and vacated 51.315(c) through (f) of the same section, the Eighth Circuit considered and chose not to preclude use of logically combined network elements, such as shared transport. We conclude, as did the FCC, that the Eighth Circuit's retention of CFR 51.315(b) forms a basis for concluding that shared transport is required by law.

We find that 47 CFR 51.315(b) prohibits USWC from separating unbundled elements. We find that separating and recombining unbundled network elements ordinarily combined in USWC's network is illogical, inefficient and violates state and federal law. We find it illogical, inefficient and discriminatory for USWC to use available combinations of elements to provide its own services, while requiring entrants to incur the delay and expense of separating and recombining them. Signaling networks and integrated software-defined operational support and network administration systems render shared transport a logically integrated system, or platform of network elements performing transport and routing functions. These integrated systems are not rationally disassembled or easily reassembled. We find that such action by USWC would impose costs on competitive carriers that incumbent LECs would not incur in violation of § 251 (c)(3) of the 1996 Act.

We believe the shared transport dispute encapsulizes important policy issues surrounding the types of competitive market development that will occur. We desire by this decision to be technologically neutral at a time when cell-switching, Internet protocol routing and digital subscriber line technology are at early stages of deployment. We found in deciding Issue A. 1-24, Call Transport and Termination, that USWC's hegemony over public switched network investment will not be a bottleneck to technological innovation. We similarly conclude that it should not distort capital formation or the capital investment strategies of facilities-based competitors. If CLECs are denied use of local interoffice transport facilities, capital may flow to unnecessarily duplicative investments that might otherwise have capitalized technological innovation. At a time when USWC is not timely meeting transmission and switching capacity demand made by CLECs and its own end users, we do not want to entrench circuit-switched technology in the public network at the expense of investment that could mitigate circuit-switched network congestion by offloading data traffic.

UCA 54-8b-2.2(5) vests us with authority to "resolve...issues necessary for the competitive provision....of local exchange services" when a telecommunications corporation seeks to exercise a right to operate under authority granted by a certificate we have issued. The FCC concluded and we concur that shared transport "is particularly important for stimulating initial competitive entry into the local exchange market," thereby allowing CLECs to take advantage of USWC's "significant economies of scale, scope, and density in providing transport facilities." We find AT&T/MCI's proposed ¶ 5 to Attachment 3 consistent with federal and state law and with the development of local exchange competition in Utah. We order that it be included in the final interconnection agreement as written below:

5. Shared Transport

U S WEST will provide unbundled access to U S WEST transmission facilities between end offices, end offices and the tandem switch, and the tandem switch and end offices for completing local calls. Such transmission facilities would be shared with U S WEST and, as applicable, with other CLECs. Transport routing shall be on an identical basis as routing is performed by U S WEST, providing the same efficiencies that U S WEST employs for itself. Costs will be allocated appropriately based upon the transmission path taken by each call. Shared transport shall meet the technical specifications as itemized below for Common Transport.

Issue 3. - 32 -- Coin Phone Signaling Capability

USWC and AT&T/MCI each propose a single but contrary sentence for ¶ 10.2.2.1.2 of Attachment 3 to the interconnection agreement relating to technical requirements for unbundled loops serving payphones. USWC seeks to bundle coin phone signaling capability with a public access loop sold to AT&T/MCI to provide payphone service. In contrast, AT&T/MCI ask to have signaling unbundled from a public access loop purchased to provide payphone service. AT&T/MCI assert that USWC incorrectly bundles coin phone signaling capability with the loop. They argue that payphone signaling is rightfully a functionality of the unbundled switching element pursuant to 47 CFR 51.319(c). Finally, AT&T/MCI note that the technical feasibility of providing unbundled coin phone signaling is unchallenged by USWC.

USWC asserts that currently offered payphone services comply with FCC Orders.[(37)] USWC correctly recites the FCC's conclusion that §251 unbundling requirements do not apply to §276 payphone services offered by incumbent LECs, and that its payphone orders "do not require that LECs unbundle more features and functions from the basic payphone line...than the LEC provides on an unbundled basis." USWC asserts that since it provides coin telephone service to itself as an integrated whole (access line, sent paid call rating, coin signaling), it meets FCC rules and §276 of the 1996 Act. Said another way, since USWC's own payphone operation bundles signaling with a public access line and since signaling is bundled in its public access line tariff, it is not required by law to unbundle signaling for public access lines provided AT&T'/MCI.

We have previously deferred to FCC processes and outcomes regarding payphone matters arising from §276 of the Act.[(38)] Insofar as §276 (c) expressly preempts "any state requirements inconsistent with FCC rules" and the FCC has declared primary jurisdiction over payphone matters[(39)], we find that the FCC has addressed the coin phone unbundling issue presented for resolution here. In the Payphone Reclassification Proceeding, the FCC concluded that unbundled payphone features and functions provided by USWC to either its own payphone operations or to others must be tariffed to eliminate discrimination and cross-subsidy. While acknowledging Bell company control of payphone facilities, the FCC declined to require USWC to unbundle more granularly than the features and functions available in a public access line, finding that further unbundling is not necessary to provide payphone service. The FCC required Bell companies to unbundle additional network elements upon request by a payphone provider based on specific criteria established in the Computer III and Open Network Architecture ("ONA") proceedings.[(40)] It acknowledged that states may impose further payphone service unbundling requirements if consistent with its own payphone orders and §276.

We conclude that USWC correctly argues that under FCC rules it must only provide "tariffed, non discriminatory basic pay phone services that enable competitive providers to offer payphone services using either instrument-implemented[(41)] 'smart payphones' or 'dumb' payphones that utilize central office coin services, or some combination of the two in a manner similar to the LECs." Accordingly, we order that USWC's proposed language be included in the final interconnection agreement.

10.2.2.1.2 Coin phone signaling as part of a public access line (PAL);

Issue 4. - 33 -- Point of Interconnection - LATA vs Local Calling Area

At issue is whether AT&T/MCI can interconnect at a single point within the Utah Local Access and Transport Area ("LATA") or, as USWC advocates, AT&T/MCI must interconnect within every local calling area. USWC asserts that a single statewide point of interconnection at an access tandem will cause it to backhaul traffic from an AT&T or MCI switch that may be located far from the originating and/or terminating point of a call. USWC claims it will have to re-engineer and augment interoffice facilities to pick-up and deliver AT&T/MCI's statewide traffic. Mixing interoffice facilities and local loops will lead to 200 mile loops it claims. Finally, USWC argues that price arbitrage motivates AT&T/MCI's request for a single interconnection point asserting that TELRIC-based prices for transport and switching necessary to terminate traffic at AT&T/MCI's switch are lower than traditional switched access rates.

In a previous section we described USWC's network architecture which direct routes traffic over dedicated trunking from one end office to another and alternately routes overflow traffic to a tandem switch. On this issue, USWC distinguishes that the overflow traffic is routed to a local tandem switch rather than an exchange access tandem.[(42)]

Its local tandem architecture is designed says USWC to handle only local overflow traffic, and its Salt Lake and Provo exchange access tandems are not part of any architecture used to reroute overflow traffic. USWC contends that allowing AT&T/MCI use of local tandems for local interoffice routing would introduce "artificialities" insofar as the local tandem and access tandem architectures would perform a primary call routing function for which they were not designed. USWC also contends that AT&T/MCI and other interconnectors traffic entering its network at a tandem switch would cause blockage. USWC says it will it will take time and experience with cooperative forecasting to design an interoffice network to handle the interdependencies of multiple users, noting that capacity cannot be immediately added.[(43)]

AT&T/MCI request use of U S WEST's local tandem for calls routing to USWC end offices. Calling such use "critical...for competitive entry", AT&T/MCI argue that USWC's local calling areas were established without regard to the more efficient and forward-looking network architectures now being deployed, and that they should not be bound by a pre-existing technology construct. AT&T attests that the economic choice between investment in transport or switching has been recast by twenty years of network evolution; whereas it was more economic historically to place more switches because transport was more costly, today it is more economic to minimize switch deployment and add lower cost transport capacity between far fewer centralized switches.

We concur in the view that declining costs and technological advances in fiber transmission technology have combined to make interoffice transport very inexpensive relative to the cost of new switch deployment. The raw carriage capacity of fiber optic transmission together with highly efficient and reliable network management made possible by SONET-compliant technology have combined to substantially reduce the cost of interoffice transport. Importantly, the potential to add multiples to transport capacity in sunk fiber interoffice investment is achievable with deployment of wave division multiplexing. We find USWC's argument that §251(c)(3) grants access to the existing network rather a future or superior one misplaced on this issue. We earlier found that posture would throttle innovation and give USWC undue control over Utah's public switched network without accountability to the public interest. The public switched network is, as always and especially now, in a state of technological evolution. MCI notes that our decision on this issue can mean the difference between a legacy network architecture and one equipped for integrated multimedia communication. We find that AT&T or MCI should not be precluded from using more efficient transport and switching methods than those used by USWC.

Neither state nor federal law defines the size of a local interconnection area or provides any specificity with regard to the number of interconnection points required in a geographic area. We therefore look for guidance from state and federal interconnection rules. Commission Rule R746-348-3 obliges a competitive carrier to identify a point of interconnection and provides that neither the incumbent nor the competitor may impose a network meet point that causes one party to incur significantly greater construction cost in building to the meet point. 47 CFR 51.305 provides that "interconnection with an incumbent's network for the transmission and routing of telephone exchange traffic, exchange access traffic, or both be provided "at any technically feasible point within the incumbent's network including....the point of access to unbundled network elements". We find "point of interconnection" used in the singular rather than the plural tense throughout state and federal rules.[(44)] Consistent with those rules, we find that AT&T/MCI should be able to interconnect with USWC's network at the point of access to tandem switching. We also find, pursuant to §51.305(c) and (d) that interconnection at tandem switches, whether local or toll, is technically feasible insofar as interexchange carriers customarily meet the "previously successful interconnection" standard at access tandems. Finally, §51.305(e) requires an incumbent to prove to a state commission why interconnection at a particular point is technically infeasible. While USWC does not allege here that local or toll tandem interconnection is technically infeasible, we find it has not produced convincing evidence, technical or otherwise, showing why AT&T/MCI should interconnect in every local calling area. We conclude such a requirement would be contrary to § 251(c)(2) of the 1996 Act and UCA 54-8b-2.2.

This issue is in part resolved by our decision in the matter of shared transport. Insofar as we found that common transport links between USWC's end offices will be shared, the number of interconnection points becomes a less significant issue. We find USWC's fear of 200 mile loops largely hyperbolic though we acknowledge that unbundled loops and interoffice facilities could be combined to produce that result in rare instances. Regardless, USWC will be compensated for any common transport provided at usage and distance sensitive rates if the transport and routing is provided pursuant to switched access tariffs, or, in accordance with shared transport rates. As noted, dedicated trunking is required by the interconnection agreement when traffic volumes reach 512 CCS.

AT&T/MCI correctly assert that USWC's proposed language for ¶ 2.2 of Attachment 4 is inconsistent with the MCI Order which states that MCI may interconnect with USWC "at one or more points of interconnection..." in the LATA. They correctly recite our clarification at the January 24, 1997 technical conference that the MCI Order did not require MCI to interconnect in every local calling area inasmuch as that would substantially increase interconnection expense and represent a formidable entry barrier. We affirm our prior conclusion and order that AT&T/MCI's language for ¶ 2.2 of Attachment 4 be included in the final interconnection agreement.

2.2 AT&T/MCIm shall designate at least one POI in the LATA in which AT&T/MCIm originates local traffic and interconnects with U S WEST. AT&T/MCIm will be responsible for engineering and maintaining its network on its side of the POI. If and when the Parties choose to interconnect at a mid-span meet, AT&T/MCIm and U S WEST will jointly provision the fiber optic facilities that connect the two (2) networks and shall share the financial and other responsibilities for that facility.

Issue 4. - 34 -- Separate Trunks for Local and Toll

¶ 8.2.1 of Attachment 4 to the interconnection agreement contains a presumption, in AT&T/MCI's view, that local traffic and toll traffic may be combined in a single trunk group, thereby allowing AT&T/MCI to carry all of a customer's intraLATA toll, interLATA toll and local traffic on one trunk. When local and toll traffic is so combined without separation onto segregated trunks, AT&T/MCI in ¶ 8.2.1 provide a mechanism for local and toll traffic measurement and self-reporting so that USWC can bill appropriate rates for each traffic type. AT&T/MCI's proposal extends to local interconnection traffic current industry practice for distinguishing intrastate from interstate toll for billing purposes.[(45)]

USWC opposes AT&T/MCI's measurement proposal and urges us to reject their language. USWC proposes that AT&T/MCI be required to use separate trunk groups for toll and local traffic insofar as its network is not designed to differentiate between local and toll traffic unless each traffic type is carried on different trunk groups. It contends the level of service needed for a toll call is much higher than for local calls and that AT&T/MCI's language would require network reconfiguration to accommodate local and toll traffic on the same trunk group. USWC claims in sum that it lacks ability to accurately bill switched access rates for exchange access provided AT&T/MCI if both traffic types are consolidated on a single trunk.

AT&T/MCI contend that USWC carries its own customer traffic, both local and intraLATA toll, over non-segregated trunk groups. They claim any requirement that local and toll traffic be separated on different trunk groups is inefficient, discriminatory and an impairment of AT&T/MCI's use of the trunk. They say that requiring use of separate trunk groups would cause unnecessary cost since there is no technical reason why local and toll traffic cannot be carried over a single trunk. AT&T/MCI advance that use of single trunk groups for local and toll will conserve trunking capacity thereby freeing up capacity for use by USWC and competitors. Finally, AT&T/MCI note that their proposed ¶ 8.2.1 permits USWC to audit reported local and toll traffic measurements if it has reason to question their accuracy.

We note that AT&T/MCI and USWC agree on the type of traffic which can be carried over trunks between their networks. We find that AT&T/MCI's proposal is consistent with jurisdictional reporting of interLATA and intraLATA toll traffic combined on single trunks which occurs in the switched access environment. We further note that ¶ 4.1.7 of Attachment 5 memorializes the parties intent to jointly develop a process to determine appropriate charges where the jurisdictional basis for charging usage-based rates is unknown. Insofar as USWC itself does not segregate local and toll traffic on separate trunks, we find that AT&T/MCI interconnection traffic, whether local or toll, should be similarly treated. We find such a result complies with 47 CFR 51.305 and UCA 54-8b-2.2(1)(b)(ii). USWC's argument that toll calls will not be properly measured is mitigated by its right to invoke audit provisions contained in section 49 of the interconnection agreement to verify the percentage of traffic that is local versus toll.

We conclude that language proposed by AT&T/MCI for ¶ 8.2.1 of Attachment 4 should be included in the final interconnection agreement and we so order.

8.2 The Parties shall initially reciprocally terminate local exchange traffic and IntraLATA/InterLATA toll calls originating on each other's networks as follows:

8.2.1 There shall be no restrictions on traffic types carried. Until the access structure is revised, to accommodate non-segregated traffic, pursuant to rules promulgated by the FCC or state commissions, two-way trunk groups will be established wherever practical, based upon AT&T/MCIm's request. Exceptions to this provision will not be based on technical infeasibility, but will be based on billing, signaling, and network requirements. For example, exceptions include: (a) billing requirements - switched access vs. local traffic, (b) signaling requirements - MF vs. SS7, (c) network requirements - directory assistance traffic to TOPS Tandems, and (d) one-way trunks for 911/E911. If Local Traffic and Toll Traffic are combined in one trunk group, AT&T/MCIm shall provide a measure of the amount of Local Traffic and Toll Traffic relevant for billing purposes to U S WEST. U S WEST may audit the traffic reported to it by AT&T/MCIm if it has reason to believe the reported measurement is not accurate. Such audit shall be conducted in accordance with the audit provisions contained in Section 49 of this Agreement. The following is the current list of traffic types requiring separate trunk groups, unless otherwise specifically stated in this Agreement:

Issue 5. - 35 -- Bill Format - CRIS vs CABS

Issue 5. - 36 -- Connectivity Bills

This is the second of two issues on which AT&T and MCI differ. At issue between MCI and USWC is whether the Customer Record Information System ("CRIS")[(46)] or Carrier Access Billing System ("CABS") should be used as the system interface for formatted billing data exchanged between them. USWC'suses CRIS for billing exchange services and CABS for exchange access billing throughout its 14-state territory. MCI urges adoption of CABS as the preferred intercarrier billing standard, asserting that it is a more easily auditable format. It establishes that CABS is required by fully executed agreements between USWC and MCI in Minnesota, Oregon and Iowa. MCI wants CABS modified to produce output in Billing Output Specification ("BOS")[(47)] format capable of accommodating both exchange access and local interconnection services. USWC estimates software development and integration costs exceeding $5 million to convert its local exchange billing to BOS format, though MCI avows that the interconnection agreement provides compensation for systems conversion cost attendant to reformatting CRIS files to CABS/BOS format.

With regard to Issue 5. - 36., MCI would again preclude use of any version of CRIS as a connectivity billing[(48)] format arguing that the industry has consistently refused to adopt CRIS as a standard for intercarrier billing. USWC counters that use of BOS for local exchange service billing is at the draft specification stage of the standardization process, and it cannot therefore be considered a uniform national format. AT&T and USWC, in contrast, agree to use CRIS or CABS, as appropriate to the service being billed. AT&T and USWC also agree to implement future standards ratified by the Telecommunications Industry Forum ("TCIF")[(49)]. USWC again advocates that we reject exclusive use of CABS for local network billing due to the systems conversion required to accommodate MCI's preference.

At the outset we note mutual agreement by all three parties to use Electronic Data Interchange ("EDI") standards and protocols for electronic billing of unbundled network elements and resale services. We note further that USWC and MCI have been exchanging switched access billing data using CABS and EDI for three years, and that CRIS can generate bills in EDI format. We believe that information systems can be used to gain competitive advantage. For that reason, we ordered USWC in the AT&T Order to "provide AT&T real-time interfaces to all information elements it reasonably needs for parity of access to intercarrier billing applications and information. Such information elements shall include, but not necessarily be limited to, access to US West's CRIS". In the MCI Order we urged closure of negotiation between the parties regarding "mapping of the Integrated Access Billing System (IABS) Billing Output Specifications (BOS) to CRIS for local exchange services". We did not know then nor do we now know the current status of standards development efforts occurring within the Operations and Billing Forum or the TCIF with respect to evolving BOS to accommodate billing of both switched access and local interconnection services. Despite much cultivation by industry standards bodies, generic requirements for unbundled element billing formats and system interface requirements have not matured sufficiently for us to decide whether language proposed by MCI or USWC is more equitable. We require further evidence about the present status of ATIS committee activities addressing adaptation of legacy billing formats and interfaces for intercarrier billing of network elements and resale services.

MCI offers no reason other than auditability and convenience as to why it is unwilling to accept CRIS data formatted for exchange via EDI. We note that only AT&T and USWC are parties to Attachment 6 of the interconnection agreement which prescribes terms and conditions surrounding interface requirements for pre-ordering, ordering, provisioning, maintenance and repair and billing for resale and unbundled network element services purchased by AT&T from USWC. That section also provides for future negotiation of a Joint Implementation Agreement ("JIA") to address data standards, message and transmission protocols, deviation from industry specifications and interoperability testing and acceptance. Indeed, Attachment 6 contemplates annual review of new or changed industry standards and guidelines issued by ATIS standing committees.[(50)]

Given the sparse record regarding current ATIS activity, we express willingness to reconsider this issue if MCI can within 20 days produce evidence demonstrating that the CABS/BOS format is likely to emerge from ATIS as a recommended guideline for local exchange service billing. Reconsideration may also be appropriate if evidence indicates that USWC, pursuant to interconnection agreements in other states, intends to undertake the software development effort to extract and reformat AMA data for local exchange services into CABS/BOS format. At present, however, we order that USWC's proposed language for ¶ ¶ 4.1.3 and 4.2.7 be included in the final interconnection agreement.

4.1.3 U S WEST shall format each bill for Connectivity Charges (hereinafter "Connectivity Bill") in accordance with the CRIS, CABS or SECAB standard as appropriate to the services billed.

4.2.7 U S WEST shall issue all Connectivity Bills containing such billing data and information in accordance with the most current version of CRIS or CABS /SECABS published by Bellcore, or its successor or such later versions as are adopted by Bellcore, or its successor as appropriate to the services being billed. To the extent that there are no CRIS, CABS, or SECAB standards governing the formatting of certain data, such data shall be issued in the format mutually agreed to by U S WEST and MCIm.

Issue 5.-37. -- Performance Measurements and Reporting

At issue is language proposed by AT&T/MCI for ¶¶ 7.3.1 and 7.3.2 of Attachment 5 to the interconnection agreement which requires performance measurements and reporting for what the agreement terms "miscellaneous services and functions". USWC's Supplemental Brief dated August 22, 1997 indicates that Issue 5.37 "has been resolved and no further action by the Commission need be taken", however, the issue is presented for resolution by AT&T/MCI and in the interconnection agreement. USWC provided no explanation in its brief as to whether or not it acquiesces to language proposed by AT&T/MCI for ¶¶ 7.3.1 and 7.3.2 of the agreement. It opposed the provision in its June 27th brief arguing that such obligations "are not grounded in the Act or in the Commission's previous Orders".

Paragraph 7.3.1 contains what we find reasonable standards for error detection/correction to ensure that new customer record data is electronically and accurately entered into USWC's databases. ¶ 7.3.2 would require USWC to provide AT&T/MCI minimal though unspecified performance metrics and service results for speed of answer, average work time and abandoned from queue measurements, in addition to its disaster recovery plans and procedures. The Commission's draft intercarrier service quality rule specifically addresses work completion intervals, though in a broader context than response times attributable to incoming calls to USWC'S carrier service center. However, R746-365-4 (C)(3)(g) would allow AT&T/MCI to request from USWC specific monitoring information relating to components of the broader preordering, ordering, provisioning, maintenance and billing monitoring reports specified in R765-365-4. If evidence exists that public telecommunications services are impaired, AT&T/MCI may also seek information collected by the Division pursuant to R746-365-4 (A)(4). If the cited rules stand, adequate recourse will exist for AT&T/MCI to secure the information sought by ¶ 7.3.2. If they do not, we order USWC to comply with the requirements of ¶¶ 7.3.1 and 7.3.2 of Attachment 5 because we conclude that they advance the development of competition and service quality in telecommunication markets. Accordingly, we order that those paragraphs be included in the final interconnection agreement.

7.3 Performance Measurements and Reporting

7.3.1 AT&T/MCIm shall provide information on new Customers to U S WEST within one (1) Business Day of the order completion. U S WEST shall update the database within one (1) Business Days of receiving the data from AT&T/MCIm. If U S WEST detects an error in the AT&T/MCIm provided data, the data shall be returned to AT&T/MCIm within two (2) Business Days from when it was provided to U S WEST. AT&T/MCIm shall respond to requests from U S WEST to make corrections to database record errors by uploading corrected records within two (2) Business Days. Manual entry shall be allowed only in the event that the system is not functioning properly.

7.3.2 U S WEST shall provide to AT&T/MCIm, at a minimum, performance metrics and service results regarding speed of answer, average work time, abandoned from queue measurements, and disaster recovery plans/procedures.

Issue 7. - 38 -- Local Service Resale

USWC and AT&T agree in ¶ 1.1 of Attachment 7 [(51)] to the interconnection agreement to an availability schedule for all resale services and network elements designated in the agreement of not more than, respectively, 90 days and 120 days. In language proposed by AT&T for ¶¶ 1.1.1 through 1.1.5 and 2.1.1 through 2.1.5, which USWC opposes, AT&T seeks to establish five "categories of intervals" associated with ordering and provisioning both local service resale and the Unbundled Network Element Platform (All Network Elements in Combination). AT&T's proposed categorization of ordering and provisioning intervals for resale and unbundled element services defines service order types, that is whether an order is an installation, disconnection or change in service parameter, and whether the order requires dispatch of field personnel to fulfill it, or whether it can be fulfilled remotely using operations support systems. The disputed language only defines ordering and provisioning categories and does not specify provisioning time intervals. However, the parties anticipate in ¶¶ 1.1 and 2.1 that the Commission could logically designate different provisioning time intervals for orders on the basis of dispatched versus mechanized service activation.

In briefing this case USWC deems this issue resolved though there is no mention of a particular resolution. The interconnection agreement and AT&T's brief designate it an open issue. AT&T espouses the necessity for categorical intervals to enable planning of marketing support services. We note that Attachment 7 is entitled "Implementation Schedule" and sets forth time intervals for availability of wholesale services, unbundled elements, interconnection trunks and access to poles, conduit and ROWs if, following execution of the interconnection agreement, those intervals have not already been established by the Commission. Commission draft Rule R746-365 proposes specific time intervals for local wholesale and unbundled loop services which distinguishes, in the case of wholesale service, between a new service installation and service migrated by a consumer from USWC to AT&T. In the case of unbundled loop provisioning intervals, the rule recognizes differences in circuit and facility types, the availability of requisite network facilities and whether or not dispatch is required.

We find that the categories proposed by AT&T comport with the intent underlying our own draft rule. Ordering and provisioning intervals should be categorized to reflect service order types and the continuum of operating expense attendant to service activation which can range from remote order entry and activation at a central office terminal, to a truck roll to the installation or disconnect site with significant accompanying labor expense. We conclude that the categories of intervals proposed by AT&T for local service resale and combined network elements are similar to those proposed in our own rule. Inasmuch as our rulemaking is at this time incomplete, we order that language proposed by AT&T for ¶¶ 1.1.1 through 1.1.5 and 2.1.1 through 2.1.5 be included in Attachment 7 to the final interconnection agreement.

1.1.1 Local service with no dispatch;

1.1.2 Local service with dispatch;

1.1.3 Feature changes with no dispatch;

1.1.4 Disconnect with no dispatch; and

1.1.5 Disconnect with dispatch.

2.1.1 Local service with no dispatch;

2.1.2 Local service with dispatch;

2.1.3 Feature changes with no dispatch;

2.1.4 Disconnect with no dispatch; and

2.1.5 Disconnect with dispatch.

Issue 7. - 40 -- Interconnection Trunking

AT&T and USWC each propose separate language for ¶ 3.1 of Attachment 7 to the agreement relating to the scheduled availability of interconnection trunking used in the mutual exchange of traffic between their networks. AT&T logically argues it must know when it can order trunks interconnecting with USWC'S network before it can provide local exchange service. USWC's failure to commit to a specific date for trunk availability, claims AT&T, will not allow it to commence business anytime soon. AT&T thus proposes that USWC provide interconnection trunk groups necessary for the mutual exchange of traffic to locations specified by AT&T within 30 days of the effective date of the agreement. Interconnection trunk orders processed thereafter would be in accordance with terms of the agreement or Commission rules. AT&T agrees to jointly forecast and develop an interconnection trunking plan with USWC.

At the August 15, 1997 technical conference the parties expressed desire to compromise on this issue and agreed to table it and redraft a mutually acceptable contract provision. However, new contract language was never filed with the Commission and the issue is presented as unresolved by AT&T and in the interconnection agreement. As a policy matter, we find the contractual commitment imposed by the Implementation Schedule in Attachment 7 key to performance of the interconnection agreement by the parties. Commission draft Rule R746-365-5, like section 10 of Attachment 4 to the interconnection agreement, would require joint planning and forecasting for interconnection trunking between AT&T/MCI and USWC. Both the rule and the agreement require joint quarterly capacity forecasting for various types of interconnecting trunk groups, mutual notice of major network projects and proactive efforts to anticipate capacity limitations before blocking occurs. USWC would be required by AT&T's proposed language and our rule to satisfy interconnection trunking service orders if consistent with jointly developed forecasts.

USWC asserts in its brief that this issue has been resolved. As previously noted, USWC avers that "it will take time and experience with cooperative forecasting to design an interoffice network to handle the interdependencies of multiple users". We reject USWC's proposed language because it fails to provide a schedule for implementation of the agreement pursuant to §252(c)(3) of the Act, which is the express intent of Attachment 7. Local telecommunications traffic cannot be mutually exchanged between the parties absent interconnection trunks. USWC's provision does not specify if or when the plan will be implemented. Rather, it substantially duplicates provisions for joint forecasting contained in section 10 of Attachment 4. In sum, USWC's language does not reach implementation but only addresses forecast development, forecast review and joint development of an interconnection trunking implementation plan. We find such a proposal unduly delays interconnection contrary to §251(c)(2) of the Act and UCA 54-8b-2.2. We are bound by the "standards for arbitration" established in §252(c)(3) of the 1996 Act to "provide a schedule for implementation of the terms and conditions by the parties to the agreement." For the foregoing reasons, we order that language proposed by AT&T for ¶ 3.1 of Attachment 7 be included in the final interconnection agreement.

3.1 Within thirty (30) days of the Effective Date of this Agreement or such other time period as the Parties may mutually agree, U S WEST shall provide interconnection trunk groups necessary for the mutual exchange of traffic or combined trunk groups as necessary or required for efficiency and interconnection billing to locations specified by AT&T. Subsequent to this thirty (30) days, interconnection trunk orders shall be processed as specified in this Agreement and/or adopted by the Commission.

Issue 7 - .41 -- Operational Support System ("OSS")

AT&T proposes in ¶ 9.1 through 9.1.5 of Attachment 7 to the interconnection agreement target implementation dates for OSSs associated with preordering, ordering, provisioning, maintenance, repair and billing of five local resale and network element categories contemplated in the interconnection agreement. The implementation dates range from November, 1997 through May, 1998. AT&T attaches extreme importance to the availability of OSSs, even suggesting that competition will be held captive until parity of access to workable and reliable OSSs is achieved. At the time its brief was filed, AT&T claimed that USWC then had no workable electronic interfaces a competitor could use for preordering, ordering, provisioning, maintenance, repair or billing. AT&T disparages USWC's Web page proposal claiming it has proved unreliable and more manual-intensive than originally thought.

USWC opposes AT&T's target dates asserting that it has agreed with AT&T/MCI on a number of issues that will be part of the implementation schedule. At the August 15 technical conference, USWC's OSS representative claimed it would be impossible to meet target implementation dates favored by AT&T and MCI.[(52)] USWC espouses that it should be held to the standard set forth in the Act that it provide service in the same manner and at the same level it provides itself or any other person. USWC argues that AT&T seeks to impose unreasonable standards not required by the Act or the AT&T Order. They propose that OSS implementation issues be deferred to "the appropriate forum - - the performance docket".

In the AT&T Arbitration Order, the Commission established requirements applicable to USWC for access to and use of OSSs by CLECs. Much of the AT&T and MCI Orders addressed our conclusion that USWC provide "parity of access" to OSSs used for provisioning, network facilities, customer records/service, maintenance and repair. We ordered USWC therein to provide access to a dozen OSSs in fulfillment of the parity of access standard. We instructed the parties to "immediately devise an interim method using US West's gateway transmission protocol, but with such modifications to the scope, format and structure of transaction processing requirements that machine to machine communication is enabled for all business processes attendant to service order entry through fulfillment". We have by rulemaking designated "OSSs used to preorder, order, provision, maintain and repair unbundled network elements, or services purchased for resale from an incumbent" as essential facilities pursuant to UCA 54-8b-2.2. FCC rules require incumbents to make OSSs available as an unbundled network element not later than January 1, 1997.[(53)]

We disagree with USWC's contention that they have agreed to much of the implementation schedule with AT&T. The Implementation Schedule contained in Attachment 7 is only two and one-half pages long. Much of it is disputed language, or if undisputed, the implementation dates have come and gone since the interconnection agreement was filed.

Inasmuch as specific dates for OSS availability have now passed, the usefulness of any implementation schedule necessarily and largely depends on efforts by the parties to interface their respective workflow systems using EDI standards and protocols. We order each party to provide the Commission within thirty days a written update of the current status of: a.) OSS functions and systems to which access has been granted in other states to track order state management, error management, network element provisioning sequences and automated flow-through provisioning on an integrated systems basis; b.) OSS interfaces used for access to legacy systems, including hardware and software employed for mediated access, and; c.) transmission protocols and media used for electronic access. In the interim, we order that the service categories AT&T proposed in ¶ 9.1.1 through 9.1.5 of Attachment 7 be included in the final interconnection agreement without the target implementation dates specified therein by AT&T. We order USWC to provide replacement dates for the stricken dates within thirty days from the date hereof. We will issue an order resolving the OSS implementation schedule if the parties cannot agree to dates.

9.1 Operational Support Systems shall be available for preordering, ordering, provisioning, maintenance, repair and billing under the following target schedule:

9.1.1 Service Resale for POTS and Multiline Hunt Group up to 12 lines ~~by 11/1/97~~;

9.1.2 Complex Business services ~~by 2/1/98~~;

9.1.3 Interim Number Portability ~~by 12/1/97~~;

9.1.4 Unbundled Network Platform ~~by 12/1/97~~;

9.1.5 Other elements within the Agreement ~~by 5/1/98 or~~ as agreed to by the Parties.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

- Within thirty days from the date hereof, U.S. WEST COMMUNICATIONS, INC., and AT&T OF THE MOUNTAIN STATES, INC., and U.S. WEST COMMUNICATIONS, INC., and MCImetro ACCESS TRANSMISSION SERVICES, INC. , pursuant to UCA §54-8b-2.2 (1)(d) and §252 (e) of the 1996 Act, shall separately submit to this Commission fully executed interconnection agreements which embody the decisions made herein.

DATED at Salt Lake City, Utah, this 28th day of April, 1998.

Stephen F. Mecham, Chairman

Constance B. White, Commissioner

Clark D. Jones, Commissioner

Attest:

Julie Orchard

Commission Secretary

1. Separately filed requests for arbitration by AT&T and MCI were previously consolidated by a Commission directive in the MCI Order that MCI participate in Docket No. 96-087-03.

2. On July 18, 1997, and October 14, 1997, the Court of Appeals for the Eighth Circuit issued decisions in Iowa Utils. Bd. v. Federal Communications Commission ("Eighth Circuit Decisions") that are pertinent to interconnection matters we consider in this docket. On August 18, 1997, the Federal Communications Commission ("FCC") issued its Third Order on Reconsideration in Docket 96-98 In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 ("Shared Transport Order"). On January, 26, 1998, the US Supreme Court granted petitions for certiorari to review three elements of the Eighth Circuit decisions. Those elements include whether proper jurisdiction to establish costing methods and prices for unbundled elements and resale services resides with the FCC or state commissions; whether incumbents must recombine unbundled network elements for competitors; and, whether the FCC or the court's interpretation of the most favored nation provision in § 252 (i) shall stand.

3. See Finding nos. 5 and 16 in our Order dated April 4, 1996, Docket No. 95-049-22, In the Matter of the Request of US West Communications, Inc., for Approval of Changed Depreciation Rates. Throughout this decade we have prescribed aggressive capital recovery rates "to protect the Company from technological obsolescence and to provide sufficient cash flow to expand and modernize its telecommunications infrastructure." In Docket No. 95-049-22 we found analog switches (the technology which precludes rebranding), "obsolete and inferior" based on the unanimous consensus of parties on that record. USWC agreed in that case to a 1999 retirement schedule for all analog switches, a schedule subsequently twice extended, thus prolonging the "technical infeasibility" defense USWC uses in this arbitration to avert rebranding of directory assistance and operator assisted call completion services.

4. UCA 54-8b-16 and 54-8b-17 grant the Commission authority to enforce compliance with the 1996 Act and its own rules related to interconnection service quality. 54-8b-17 (1) establishes an expedited procedure for resolution of service quality complaints related to performance of the terms and conditions of interconnection agreements. Upon finding that a breach of the 1996 Act, Commission service quality rules or the terms of an approved interconnection agreement has occurred, the Commission by law must order that the breach be remedied, and may impose penalties pursuant to 54-8b-17 (3) and (4).

5. R746- 348-7 designates fourteen network elements considered essential interconnection services and facilities pursuant to UCA 54-8b-2.2, while R746-348-6 designates six features and functions that are ancillary to the essential facilities and services enumerated in the following section.

6. As noted by AT&T/MCI, the FCC concurs with that view as expressed in its First Report and Order in Docket 96-98 ("Local Interconnection Order") where it found that incumbent LECs cannot use § 251(b)(4) to gain access to a competitor's facilities because the 1996 Act amends § 224 to expressly withhold such access rights.

7. The definitions of "utility", "telecommunications carrier" and "local exchange carrier" were all amended by the 1996 Act. The definition of utility expressly includes local exchange carrier which is itself defined in § 153 to mean "any person engaged in the provision of telephone exchange service or exchange access." Telecommunications carrier" is defined in § 153 to mean "any provider of telecommunications services", though § 224(a)(5), as noted, excludes incumbent local exchange carriers from that definition for purposes of pole attachment rights.

8. The Commission's formal notice to the FCC certifying its jurisdiction and the legitimacy of that jurisdiction under state law was affirmed by the Utah Supreme Court in Utah Cable Television Operators Association, Inc. et al v. Public Service Commission of Utah, 656 P.2d 358 (1982).

9. CFR Chapter 1, Subpart J, § 1.1401 through 1.1416 contains FCC rules implementing 51 U.S.C. § 224.

10. UCA 54-8b-2.2 (1) (a) (i) authorizes the Commission to "require any telecommunications corporation to interconnect its essential facilities with another telecommunications corporation that provides public telecommunications services.....". UCA 54-8b-2.2 (1) (b) (i) grants "all telecommunications corporations providing public telecommunications services....the right to interconnect with the essential facilities and to purchase the essential services of all other certificate holders.....on a non-discriminatory and reasonably unbundled basis" in competitive areas. UCA 54-4-13 (1) authorizes the Commission to make a public interest finding requiring the "use by one public utility of the conduits, subways,..wires, poles,...or other equipment, or any part thereof, on, over or under any street or highway, belonging to another public utility..." and when "such public utilities have failed to agree upon such use or the terms and conditions and compensation for the same, the Commission may, by order, direct that such use be permitted, and prescribe a reasonable compensation and reasonable terms and conditions for the joint use."

11. CFR 1.1403 (a).

12. AT&T/MCI note that USWC produced a voluminous filing in Colorado showing "over 500 internal measurements and benchmarks used by

U S WEST in managing and operating its business." That information is not on this record.

13. Formation of the Joint Provisioning Team was precipitated as a result of Docket No. 97-2202-01 In the Matter of Application of Electric Lightwave, Inc for Order to Compel US West Communications, Inc. To Implement Interconnection ("the ELI Petition") [filed 2/11/97].

14. In a draft interconnection agreement filed November 1, 1996 in Docket No. 96-087-03 by AT&T, some seven dozen Direct Measures of Quality ("DMOQs") were proposed. Inasmuch as the Commission then faced numerous potential petitions for arbitration under the 1996 Act, we deferred consideration of the DMOQs in the AT&T arbitration in favor of a generic rulemaking in Docket 94-999-01 that would establish uniform service quality rules governing interconnection between USWC and competitive local exchange carriers. In the current iteration of the interconnection agreement under consideration here, AT&T/MCI propose additional performance objectives to the number proposed and included in the December 2, 1996 draft interconnection agreement. They now believe the performance objectives in the prior agreement were insufficient.

15. In the AT&T Order we noted "the existence of a Utah Joint Provisioning Team composed of US West and CLEC representatives which is addressing joint forecasting and facility order processing requirements, including transport facility reservation and allocation, and compliance measures. We are monitoring the progress of this effort in reaching closure on interconnection service issues. We may impose interim intercarrier provisioning and systems access standards pending adoption of final intercarrier service quality rules if consensus fails to emerge from the Joint Provisioning Team effort."

16. See UCA 54-8b-(3)(a), 54-8b-9(3) and §§ 252(e)(3), 253(b), 261(c), 256(a) and 273(e)(3) of the 1996 Act.

17. See §§252(d)(3) and 251(c)(4) of the 1996 Act, 47 CFR 51.613 to 51.617, UCA 54-8b-3.3(2)(b) and the Phase 1 Order pp. 28-33 which address the resale issues consolidated herein for decision.

18. See 47 CFR § 51.613 (a)(2) which establishes terms and conditions for resale of promotional offerings provided by incumbent local exchange carriers, to wit: "*Short Term Promotions*. An incumbent LEC shall apply the wholesale discount to the ordinary rate for a retail service rather than a special promotional rate only if: (A) such promotions involve rates that will be in effect for no more than 90 days; and (B) the incumbent LEC does not use such promotional offerings to evade the wholesale rate obligation, for example, by making available a sequential series of 90-day promotional rates."

19. USWC's resale obligation is tempered by § 251(c)(4)(B) and 47 CFR 51.613(b), its attendant FCC rule, which allows a state Commission, "consistent with the regulations prescribed by the Commission [FCC] under this section, [to] prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers." In the AT&T and MCI Orders we limited resale restrictions in Utah to two narrowly defined restrictions specified in 47 CFR 51. 613, or to restrictions imposed by existing Commission orders until such order is amended or superseded. The Eighth Circuit affirmed the FCC's authority under 251(c)(4)(B) of the 1996 Act to issue regulations regarding an incumbent LECs "duty not to prohibit, or impose unreasonable limitations on the resale of telecommunications services."

20. See UCA 54-8b-1.1 and §§ 251(c)(5), 256(a) and (d), 257(b), 261(c), 273(e)(3) and 706 of the 1996 Act.

21. Though 47 CFR 51.711 was vacated by the Eighth Circuit, it required symmetrical reciprocal compensation absent a showing, available only to the competitive provider, of higher forward looking costs justifying higher and asymmetrical prices favoring the competitive provider.

22. 47 CFR § 51.319 (c) defines specific unbundling requirements including those for local switching. § 51.319 (c)(1)(C) defines the local switching network element to include "all features, functions and capabilities of the switch, which include, but are not limited to:......(2) all other features that the switch is capable of providing, including but not limited to custom calling, custom local area signaling service features,.....as well as any technically feasible customized routing functions provided by the switch".

23. We note that it is technically infeasible for USWC to route a competitor's voice mail traffic onto trunk groups terminating in the voice mail platform from certain outdated switches deployed in USWC's Utah network. The problem is the same as that described in section A. - 1 where USWC cannot route a competitor's traffic to directory assistance and operator-handled trunk groups to accommodate OPS and DA branding. The problem affects a significant minority of Utah lines.

24. USWC cites no authority for its assertion that the FCC requires it to provide local interoffice transmission facilities between central offices as dedicated facilities. Dedicated transport links are defined by Commission rule R746-348-2(3) to mean "transmission facilities between two switching systems where traffic originates with or terminates to the same or another public telecommunications service provider". We note that the subject interconnection agreement, like most approved by the Commission, provides in ¶ 10.4.2 of Attachment 4 that dedicated facilities will be used between end offices when traffic reaches volume equivalent to 512 Centum Call Seconds. Besides dedicated links, common transport links are defined by R746-348-2 to mean "shared transmission facilities between two switching systems where traffic originating with or terminating to multiple telecommunications service providers is commingled".

25. We note here a distinction in the use of the term "common transport" which AT&T/MCI and USWC sometimes use in different contexts. In a switched access context common transport is an exchange access service purchased by interexchange carriers which commingles the traffic of multiple joint users on shared facilities for routing to USWC's tandem switch. An interexchange carrier purchasing common transport pays usage and distance-sensitive tandem transmission rates, a tandem switching charge and a local switching charge for call termination at the destination end office. USWC holds that its interexchange access tariff is the only source from which shared interoffice transmission facilities providing common transport between USWC tandems and end offices can be purchased. In contrast, AT&T/MCI view common transport in a local interconnection context where local interoffice trunking and transmission facilities between end offices are shared between USWC and all CLECs. Common and dedicated transport would still be available as switched access services for use in delivery of toll traffic.

26. USWC argues that the network interface device, the local loop and the switch port are the only network elements dedicated to a particular end-user. When a customer places a call, the USWC network will choose a route depending on network loads and combine particular elements for the duration of that one call. When the call is complete, the elements become uncombined and available for reassembly in different combinations to handle the next call.

27. AT&T/MCI assail as "semantic gamesmanship" USWC's claim that it combines elements when routing a call. AT&T/MCI profess that USWC does nothing to "combine" elements when a call is routed through its network noting that the switch and signaling system are what determine the call path and which transport elements will be used to complete a call. AT&T/MCI call these "unified elements" because they are conjointly used to transmit and route calls, and because a new entrant could not provide any finished switched service without them.

28. USWC routes its own local interoffice traffic approximately 80% of the time over direct transport links between end offices. When direct interoffice trunks are carrying peak loads, traffic is overflowed to a tandem switch where it is again switched and rerouted to the destination end office. We note that AT&T/MCI agree to pay USWC's tandem transmission and switching charge when their traffic levels exceed USWC's direct trunking capacity and are overflowed to the tandem. In contrast to the above, USWC would tandem-route all AT&T/MCI traffic entering its network unless AT&T/MCI establish dedicated trunking between their switch and USWC end offices.

29. USWC argues that usage sensitive pricing which occurs after consumption of network capacity shifts business and engineering risk associated with capacity planning to it while eliminating that risk for AT&T and MCI.

30. AT&T/MCI's claim that USWC is constrained in its ability to timely provision trunking and tandem interconnection facilities is credible. That became apparent to us as a result of the Joint Provisioning Team technical conferences (see Issue A.-20).

31. The Eighth Circuit Court did not reach whether or not interoffice facilities, as a network element, is defined so as to be limited to facilities or capacity dedicated for exclusive use. However, by not vacating the FCC's definition of unbundled local switching and signaling, the Eighth Circuit implicitly preserved the right of an entrant to purchase a network element for a non-exclusive, transitory period of time while the element is needed to perform a function involved in providing service. See 47 CFR 51.309 (c).

32. 47 CFR § 51.309 (a) prohibits an incumbent from imposing "limitations, restrictions, or requirements on requests for . . . unbundled network elements that would impair the ability of a requesting telecommunications carrier to offer a telecommunications service."

33. 47 CFR § 51.313(b) provides that "the terms and conditions pursuant to which an incumbent LEC offers to provide access to unbundled network elements, including but not limited to, the time within which the incumbent LEC provisions such access to the UNE shall, at a minimum, be no less favorable to the requesting carrier than the terms and conditions under which the incumbent provides such elements to itself."

34. AT&T/MCI point out that USWC's proposal would require that a competitors engineers have virtually unlimited access to USWC's network facilities. At the August 15 technical conference, USWC said it was "studying the issue" of access by AT&T/MCI personnel to network elements for purposes of recombination.

35. AT&T/MCI note that as a party with standing in Iowa Utilities Board v FCC, USWC specifically asked the Eighth Circuit to vacate the whole of § 51.315, however the Court only vacated 51.315(c) through (f).

36. The Court said section 252(c)(3) of the Telecommunications Act of 1996 "unambiguously indicates that requesting carriers will combine the unbundled elements themselves." It added that "unlike the Commission [FCC], we do not believe that language can be read to levy a duty on the incumbent LECs to do the actual combining of elements....The Act does not require the incumbent LECs to do all of the work."

37. The FCC has promulgated regulations pursuant to § 276 of the 1996 Act which have essentially restructured the payphone industry, including the payphone operations of USWC. The law mandates that Bell company payphone operations not be subsidized by other company operations, and that a Bell company providing payphone service " not prefer or discriminate in favor of its payphone service". The FCC issued its first order in Docket 96-128 ("Payphone Reclassification Proceeding") on September 20, 1996 and has since issued three further orders clarifying the intent of

the September 20 order with regard to § 276 implementation issues.

38. See Order dated August 19, 1997 in Docket 97-999-05 denying AT&T and MCI'S request In the Matter of the Petition of AT&T and MCI to Investigate Whether to Certify Utah LECs as to Compliance with FCC Payphone Orders.

39. In a July, 1, 1997 opinion , the United States Court of Appeals for the District of Columbia Circuit upheld the FCC's preemption of state authority in the payphone proceeding holding that § 276 " unambiguously grants the Commission authority to regulate the rates of local coin calls". The Court also sustained FCC rules regarding tariffing of elements used to provide payphone service which fulfill the § 276 requirement that a Bell company providing payphone service " not prefer or discriminate in favor of its payphone service".

40. Open Network Architecture rules require a Bell company to respond within 120 days to a request from a competitor for a new basic ONA service. In Computer III, the FCC established criteria a Bell Company must use in deciding whether to provide the service, including market area demand, utility of the service as perceived by the requesting party, technical feasibility and cost. We note that this record contains no evidence regarding cost or market area demand for applications enabled by unbundled coin signaling.

41. The FCC's part 64 rules define "instrument-implemented" payphone equipment as "a telephone containing all circuitry required to execute coin acceptance and related functions within the instrument itself and not requiring coin service signaling from the central office". These "smart" and often independently owned payphones are distinguished from a "coin line" phone which uses central office based intelligence to control the operation of a "dumb" payphone.

42. In a switched access environment, local exchange carriers perform the exchange access function of routing interexchange carrier toll traffic using a tandem switch as an intermediate switching point between an interexchange carrier's point of presence and the terminating end office. In contrast, USWC's *local* tandem architecture, which they claim is designed only to handle overflow from direct end office to end office links, is not a commonly used architecture by local exchange carriers. Most carriers would use the access tandem to handle any overflow on direct transport links.

43. USWC asserts, for example, that vendor lead times for capacity additions to a tandem switch can be as long as six months.

44. Some guidance on this issue is also provided by FCC rules regarding universal service. 47 CFR 54.201(g) prevents a state commission from requiring a carrier providing universal service "to use facilities that are located in the relevant service area" where "service area" is defined as the"overall area" for which the carrier receives federal universal service support. The example used in the FCC's Universal Service Order is a Dallas service area served by a San Antonio Switch. The FCC like us observed changes in efficient network design incorporating fiber rings and consolidated placement of switches performing end office and tandem functions.

45. Currently, USWC's switched access tariffs allow interexchange carriers to carry intraLATA and interLATA toll traffic over the same trunk group. Inasmuch as interstate and intrastate switched access rates are not the same, interexchange carriers measure and report intrastate versus interstate toll minutes for billing purposes. AT&T/MCI, for example, measure intraLATA and interLATA toll traffic and provide USWC a Percent Interstate Use Report which is used as a basis for determining whether FCC or state switched access tariffs are levied.

46. CRIS is a pre-divestiture management information system developed by Bellcore for retail local exchange products. It is linked to Automatic Message Accounting (AMA) software in the wire center which records customer call detail and toll billing data, an interface that now exists between AMA and CRIS but which is not fully developed for CABS. CRIS has been modified to various degrees by individual Bell companies since divestiture.

47. CABS and BOS are defined by the Ordering and Billing Forum of the Carrier Liaison Committee of the Alliance for Telecommunications Industry Solutions. The CABS specification is published by Bellcore. It contains recommended guidelines for billing of switched access and other connectivity services. We note that MCI is not a party to Attachment 6 of the interconnection agreement which adopts a BOS bill format and EDI for billing of flat rated trunks, frame relay and resale services between USWC and AT&T.

48. Connectivity billing and recording is defined in the interconnection agreement as charges AT&T/MCI incur for purchase of usage and non-usage sensitive services in Utah. Separate billing code identifiers and quantification of each purchased service is required by the agreement.

49. Both the Carrier Liaison Committee and the TCIF are standing committees sponsored by the Alliance for Telecommunications Industry Solutions (ATIS) which facilitates standards development for more efficient technologies in the telecommunications industry.

50. Pending Commission rule R746-365-3(B) also expressly contemplates that USWC will implement "within 180 days of publication industry standards or guidelines issued by the Alliance for Telecommunications Industry Solutions that facilitate parity of access to operations support systems...." USWC uses "to store and retrieve information related to network engineering and administration".

51. Attachment 7 is proposed only for the interconnection agreement between USWC and AT&T.

52. In states where fully executed agreements exist between the parties, USWC was scheduled to begin OSS interoperability testing in January, 1998.

53. See 47 CFR 51.319 (f) and R746-348-7 (10).