



and USWC's Providing rates on Customer Service Request. We will discuss the issues in that order.

## NEXTLINK ACCESS TO USWC'S SS7 SIGNALING NETWORK

### A. Background

Signal System 7 (SS7) is a network auxiliary to the main telephone voice and data network. SS7's function is to manage and control the voice and data network. To quote Nextlink's post-hearing brief:

[SS7] performs an integral role in network supervision, conveying information about call routing, bill verification, and network management; it also supports telecommunications tasks ranging from dial tone to accessing voice mail. There is no dispute that access to SS7 is essential to the provision of telecommunications service.

Without access to a SS7 network, a Local Exchange Carrier (LEC) is limited to its own network -- that is it cannot complete outgoing calls to, or incoming calls from, another LEC's network.<sup>(2)</sup>

US WEST attempts to provide SS7 backup capability through the provision of A-Links and Signaling Transfer Points (STP) in pairs. This backup SS7 capability through A-Links and STP pairs is not always reliable. With this redundancy in place, NEXTLINK has experienced outages. For example, if a pair of A-Links lies in the same cable sheath, and that cable sheath is cut, both A-Links will go down. Thus, those pairs will not always provide NEXTLINK sufficient redundant routing. . . . US WEST's existing ability to avoid SS7-related problems goes beyond the redundancy provided through A-Link and STP pairs. If one set of US WEST's A-Links or STP's is down, US WEST can route its SS7 signaling to another set of A-Links and/or STP's in its network, such as to its regional STP's. . . . Under the current US WEST SS7 network configuration, NEXTLINK does not have the same ability as US WEST to reroute SS7 signaling to another set of A Links and/or an STP.<sup>(3)</sup>

Owing to experiences in Spokane, Washington, in which failures of the SS7 link between Nextlink and USWC occasioned service outages of one and seven hours, Nextlink seeks a provision in the proposed interconnection agreement (the Agreement) for alternate SS7 routing going through an independent signaling network, operated by GTE Intelligent Network Services, Inc. (GTE INS). "If the primary SS7 routing to U S WEST broke down for some reason (or became congested), the US WEST STP and the NEXTLINK telephone switch would recognize that fact and direct SS7 signaling to follow the back-up or redundant path."<sup>(4)</sup>

### B. Positions of the Parties

#### 1. Technical Feasibility

*USWC Position:* USWC concedes that the physical connection sought by Nextlink is technically feasible. Its claim of wider technical infeasibility is based on an appeal to Fear, Uncertainty, and Doubt (FUD).<sup>(5)</sup> As a fallback position, USWC asserts that the proposed alternate SS7 network should be implemented only after standards are set by a national

standards-setting body such as Bellcore.<sup>(6)</sup> Nextlink objects to such an approach as too

time-consuming.<sup>(7)</sup>

*Nextlink Position:* Nextlink claims that beyond the physical connection capability, it has confirmed the arrangement's technical feasibility through testing by NORTEL and by discussions with other equipment vendors and SS7 signaling suppliers, including GTE Intelligent Network Services, Ericsson, Tekelec, and DSC Communications, Corp.

Nextlink concedes that no other carrier has as yet implemented its proposed alternate SS7 network, but asserts that both Southwestern Bell Telephone (SBC) (in Texas) and GTE (in all GTE service areas) have agreed to provide Nextlink with the requested alternate SS7 signaling arrangements. Nextlink asserts further that SBC and GTE have signed interconnection agreements for the state of Texas with Nextlink, and that in Tennessee, BellSouth has agreed to test Nextlink's alternate SS7 proposal as a settlement of an arbitration. Moreover, Nextlink asserts, if Nextlink's alternate routing proposal performs in those tests as Nextlink projects, BellSouth will implement Nextlink's proposal.<sup>(8)</sup>

#### 2. Legal Requirements

*USWC Position:* USWC resists implementation of Nextlink's proposal with the assertion that such implementation is tantamount to providing Nextlink a network connection superior to USWC's own network, a requirement unsupported by Federal or State law.<sup>(9)</sup>

*Nextlink Position:* Nextlink ripostes that the appropriate legal standard is not a network configuration identical to that of USWC, but instead access that is "at least equal in quality" and "non-discriminatory" (under federal law) and "not lower in quality" (under Utah law). Nextlink seeks such access with its alternate routing proposal, in order to give itself the same ability to protect its SS7 signal routing as USWC gives itself. <sup>(10)</sup>

### C. Discussion

The United States Supreme Court has applied its imprimatur <sup>(11)</sup> to all of the Federal Communications Commission's (FCC) rules <sup>(12)</sup> with the exception of 47 CFR § 51.319. We are mindful that the case is on remand, raising the question whether the FCC rules, or all of them except 319, currently have the force of law.

We don't care whether they do or not.

There is a *Leitmotiv* running through recent Federal and State telecommunications legislation -- namely that whatever promotes competition is good, and whatever inhibits it is, at the best, suspect. The *Leitmotiv* runs strongly through the FCC rules. We, along with the U.S. Supreme Court, believe the FCC rules embody a correct construction of the Federal legislation, and, accordingly, whether or not at this writing they constitute governing law, we are prepared to accord them considerable deference. "Technically feasible" is defined by 47 CFR § 5 as follows: Interconnection . . . shall be deemed technically feasible absent technical or operational concerns that prevent the fulfillment of a request by a telecommunications carrier . . . . A determination of technical feasibility does not include consideration of economic, accounting, billing, space, or site concerns, except that space and site concerns may be considered in circumstances where there is no possibility of expanding the space available. The fact that an incumbent LEC must modify its facilities or equipment to respond to such request does not determine whether satisfying such request is technically feasible. *An incumbent LEC that claims that it cannot satisfy such request because of adverse network reliability impacts must prove to the state commission by clear and convincing evidence that such interconnection, access, or methods would result in specific and significant adverse network reliability impacts.* (Emphasis added.)

USWC's vague appeal to FUD does not, in our estimation, meet the "clear and convincing" proof standard mandated by the rules. There has not been even a suggestion that Nextlink's personnel are irresponsible dabblers, and it is obviously not in Nextlink's interest to destabilize the network. Moreover, Nextlink's readiness to implement the arrangement on a test basis provides adequate safeguards for system integrity. Accordingly, we must deem the arrangement technically feasible under applicable law.

In regard to USWC's claim that it is not required to afford Nextlink a "superior" network, 47 CFR § 51.305 provides:

(a) An incumbent LEC shall provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the incumbent LEC's network:

\* \* \*

(4) that, if so requested by a telecommunications carrier and to the extent technically feasible, *is superior in quality to that provided by the incumbent LEC to itself or to any subsidiary, affiliate, or any other party to which the incumbent LEC provides interconnection.* (Emphasis added.)

In our estimation, this language clearly negates USWC's position. We conclude that Nextlink's proposal, and its proposed implementing language <sup>(13)</sup> should be adopted.

## SPOT FRAME AND COMBINATION OF UNBUNDLED NETWORK ELEMENTS

### A. Background

US WEST proposes to require that Nextlink obtain access to all Unbundled Network Elements (UNE), or combinations thereof, through a Single Point of Termination (SPOT) frame, *i.e.*, an Intermediate Distribution Frame (IDF) between the main (COSMIC) distribution frame in a central office and the equipment in Nextlink's collocation cage. NextLink opposes this proposal, asserting that a SPOT frame introduces potential signal degradation and failure points to the Nextlink's network, creates obstacles to coordinated circuit transfers from USWC to Nextlink, and imposes substantial additional costs to access an unbundled loop that would not be present if Nextlink accesses loops directly from the COSMIC frame. Nextlink further asserts that USWC's proposal to have various CLECs do the jumper work on a common SPOT frame further burdens CLECs' access to unbundled loops by requiring dispatch of CLEC personnel to the US WEST central office each time a loop is provisioned and by imperiling network integrity and customer service quality through allowing multiple carriers to have access to the same distribution frame.

## B. Positions of the Parties

### 1. Technical Feasibility

*USWC Position:* USWC defends its proposal on the basis that the "SPOT frame has numerous benefits because it provides a single location where access to UNEs is available and it allows US WEST to aggregate CLEC demand which reduces costs for CLECs and efficiently utilizes network resources."<sup>(14)</sup>

*Nextlink Position:* Nextlink opposes the proposal as introducing additional points of failure into the network, confusing responsibility for testing and maintenance, and unnecessarily increasing Nextlink's expense. Instead, Nextlink proposes an Expanded Interconnection Channel Termination ("EICT") from the Nextlink's collocated equipment directly to the COSMIC frame.<sup>(15)</sup> Nextlink notes that USWC has heretofore provided such direct access.

### 2. Legal Requirements

In its brief, USWC deals cursorily, if at all, with the SPOT frame issue *per se*, concentrating instead on issues of aggregating UNE's. Nextlink argues that the Federal Act's plain language requires interconnection at any technically feasible point,<sup>(16)</sup> and USWC does not seriously argue that the interconnection Nextlink seeks is not technically feasible.

## C. Discussion

As nearly as we can understand USWC's argument, its obligation to a connecting CLEC is fulfilled so long as it puts the same conditions, no matter how unreasonable or onerous, on all comers. We don't think so.

That USWC has provided access in the past as desired by Nextlink demonstrates plainly that such interconnection is technically feasible. USWC's apparent construction of the statute clearly ignores the plain language of 47 USC 251(c)(2)(B). We do not perceive USWC's purported advantages of the SPOT frame as outweighing the disadvantages to Nextlink and similarly-situated CLEC's. It clearly renders CLEC's "second-class citizens" vis-a-vis USWC and its own use of the network.

Inasmuch as USWC's proposal is required neither by technical feasibility nor legal considerations, Nextlink's contract language<sup>(17)</sup> governing the subject matter should be adopted.

### EXTENDED LOOP A. Background

An extended loop is an extension of an ordinary voice grade loop over a dedicated voice grade interoffice transmission channel. Nextlink intends to use extended loops to provide competitive services to customers connected to USWC central offices where Nextlink is not collocated.

## B. Positions of the Parties

### 1. Technical Feasibility

There is no serious issue as to the technical feasibility of Nextlink's proposal.

### 2. Legal Requirements

*USWC's Position:* USWC argues that we should reject Nextlink's suggested language because ILECs are not required to combine UNE's by the plain language of 47 USC. § 251(c)(3),<sup>(18)</sup> which places the burden of connecting UNEs upon a requesting carrier.

USWC claims support from the Eighth Circuit's decision in *Iowa Utilities Bd.*, in which decision, the Eighth Circuit addressed the validity of 47 C.F.R. § 51.315(c)-(f), which required an ILEC "[u]pon request, . . . to combine unbundled network elements in any manner, even if those elements are not ordinarily combined in the [ILEC's] network." 47 C.F.R. § 51.315(c). The court vacated these regulations, holding that 47 USC 251(c)(3) "unambiguously indicates that requesting carriers will combine the unbundled elements themselves." *Id.* at 813.

USWC argues that since this portion of the Eighth Circuit's decision was not appealed to the Supreme Court, these regulations remain invalid.

USWC also claims support from the U.S. Supreme Court's decision in *AT&T Corp. v Iowa Utilities Bd.*, 1999 WL 24568 (Jan. 25, 1999), in which decision, the Court addressed the validity of 47 C.F.R. § 51.315(b), which prohibits an ILEC from separating network elements that are currently combined. Reversing the Eighth Circuit, the Court held that Rule 315(b) was a reasonable interpretation of 47 U.S.C. § 251(c)(3) because Rule 315(b) "is aimed at preventing [ILECs] from disconnecting previously connected elements, over the objections of the requesting carrier . . . just to

impose wasteful reconnection costs on new entrants." *Id.* at 11.

USWC argues that by upholding Rule 315(b), the Court implicitly recognized that an ILEC cannot be forced to connect otherwise unconnected UNEs. If this were not the case, Rule 315(b) would not be a reasonable interpretation of 251(c)(3) because the rule would be redundant, *i.e.*, if a requesting carrier could force an ILEC to combine UNEs, then the requesting carrier would not need Rule 315(b) proscribing the separation of currently combined UNEs.

USWC asserts that it is willing to provide access to certain UNEs, but it is under no legal obligation to connect them, as would be required by Nextlink's proposal.

As a further argument, USWC asserts that providing Nextlink with access to an unbundled loop in a central office in which the loop is not located is not required by the Act. Section 251(c)(3) requires that ILECs provide requesting carriers access to UNEs at any "technically feasible point." 47 U.S.C. § 251(c). USWC argues that implicit in this statute is the limitation that access only must be provided at places in the network where the UNE is actually located. According to the Eighth Circuit, section 251(c) "[b]y its very terms . . . only indicates *where* unbundled access may occur." Iowa Utilities Bd., 120 F.3d at 810. The Supreme Court agreed with the Eighth Circuit's decision that providing access at any "technically feasible point" refers to a technically feasible location, not to technically feasible access, as originally interpreted by the FCC. Because the loop element to which Nextlink wants access for an expanded loop is located in a central office in which Nextlink is not collocated, there is no technically feasible location for access.

Finally, on policy grounds, USWC argues that requiring requesting carriers to bear the burden of combining otherwise non-combined UNEs makes sense. USWC asserts that extended loops are a finished service--known as a "private line service" or "FX service"--which U S WEST assembles for its own customers. Loops and dedicated interoffice transports are not elements currently combined in USWC's network. Accordingly, argues USWC, Nextlink's demand for an extended loop is actually a demand to purchase a finished service at TELRIC prices.

Nevertheless, argues USWC, denying Nextlink's demand to force US WEST to provide it extended loops does not preclude Nextlink from serving potential customers in areas in which it is not currently collocated. Instead, it merely forces Nextlink to pay its own way without requiring USWC to subsidize it. Nextlink has a choice among various options. One option is to physically collocate in the central office in the area in which it desires to serve. This need not require Nextlink to make a substantial investment in a central office from which it serves only a few customers; Nextlink could request a SPOT collocation (or similar arrangement). Another option may be to "virtually" collocate in the central office. Indeed, the FCC has recognized that "virtual" collocation is an acceptable and less expensive alternative available to CLECs that want access to unbundled elements, but do not wish to incur the cost of physically collocating in an ILEC's various central offices. A third option is for Nextlink to purchase extended loops from USWC as a finished service, discounted by the costs USWC avoids by selling the retail service to Nextlink at wholesale rather than at retail to end user customers.

*Nextlink's position:* Nextlink argues that requiring USWC to make the extended loop available to Nextlink will immediately promote more widespread competition in Utah by increasing the number of customers to whom Nextlink can offer a competitive service. Nextlink represents that it intends to provide service primarily through its own facilities, but that it cannot replicate USWC's local network. Use of extended loops, however, would make it feasible for Nextlink to compete for customers even where it will only serve a few customers within the serving area of a USWC central office.

Nextlink asserts that all that is required of USWC to provide Nextlink with access to an extended loop is a simple cross connection, an activity that USWC has performed thousands of times. There is no significant difference between the cross connections used to provide an extended loop and the cross connection used to provide an unbundled loop in an office where a CLEC is collocated.

Nextlink further argues that FCC rules require USWC to provide cross connect facilities where needed, and asserts that Bell Atlantic has offered to provide extended loops to Nextlink and other CLECs for some time.

Nextlink asserts that other state commissions have imposed just such a cross connect requirement, including Oregon, Colorado and Iowa.

Nextlink also argues that this Commission also has the independent authority to require that USWC make the connections necessary to provide extended loops. The Federal Act expressly contemplates that state commissions will be able to continue to carry out state law, as long as it is not inconsistent with the purposes of the 1996 Act. Utah law, in turn, requires that US WEST provide "access to . . . its essential facilities . . . on terms and conditions, including price, no less favorable those the telecommunications company provides to itself and its affiliates." Utah Code Ann. § 54-8b-2.2(1)(b)(ii). The legislature further "encourage[s] the development of competition as a means of providing wider customer choices for public telecommunications services throughout the state" and "by facilitating the sale of essential telecommunications facilities and services on a reasonably unbundled basis." Utah Code § 54-8b-1.1(3) & (6). Enabling competitors to access unbundled loops from USWC central offices in which they are not currently collocated will

immediately provide greater opportunity for customer choice throughout a much wider area of the state. The Commission clearly has authority under state law to order USWC to provide extended loops to Nextlink to promote the development of competition in Utah.

### C. Discussion

As noted above, we are not overly concerned whether the existing FCC rules, or any part of them, are technically in effect. We believe Rule 315(d)<sup>(19)</sup> is good law, consistent with the pro-competitive aims of the Federal Act, and consistent with Utah law. We agree with Nextlink that we are not precluded by the Federal Act from applying our own law consistent with the Federal Act. In previous cases involving AT&T and MCI, we required USWC to furnish bundled elements including local transport.<sup>(20)</sup> We see no reason advanced by USWC to recede from that position.

Accordingly, we adopt Nextlink's language governing this subject matter.<sup>(21)</sup>

#### NEXTLINK ACCESS TO USWC AIN TRIGGERS

##### A. Background

The Advanced Intelligent Network (AIN) is a network architecture which uses the SS7 network and network databases outside of a switch to manage the processing and routing of telephone calls. Rather than having a database resident solely in one switch or computer, AIN databases and the necessary tools to manage them are distributed throughout the network.<sup>(22)</sup>

The use of AIN supports rapid introduction of new capabilities throughout networks and allows considerable flexibility to provide customized services. AIN provides support for an array of basic and advanced telecommunications services, including local number portability, such as "Single Number Services" which provide customers with one number, allowing callers to locate the customer wherever she or he may be. AIN can also be used to provide voice-activated services which allow customers to place their calls orally.<sup>(23)</sup>

In an AIN architecture, a switch is operated with software which allows carriers to create "triggers." These interact with AIN databases to provide AIN-based services to subscribers. Triggers can be created to respond to specific events (referred to as "call states") in the progress of a telephone call. For example, picking up the phone is a call state, known as "off-hook," to which carriers can assign an AIN trigger.<sup>(24)</sup> Dialing and collecting digits in the process of making a call is another call state to which a trigger can be assigned. Moreover, Triggers can be customized for each customer.<sup>(25)</sup>

Depending on which AIN service is deployed, a given trigger suspends the progress of the call in a specific call state allowing the switch to interact with AIN databases, which in turn provide the switch with additional call processing information.<sup>(26)</sup>

Specifically, the trigger sends a query to a Service Control Point (SCP). The information furnished through the SCP can range from basic call connect and disconnect functions to sophisticated interactions, such as enabling the customer to update her or his call routing information "on the fly," endowing the customer with a flexible call-forwarding service.<sup>(27)</sup>

Under its proposal, Nextlink would not use direct access to USWC's switch, but would instead use USWC's normal ordering and provisioning processes to request the use of specific AIN triggers. Nextlink, as an interim method, has proposed to make modifications to the Local Service Request (LSR) form or the Access Service Request (ASR) form to provide USWC the necessary provisioning information.<sup>(28)</sup>

In the case of service to a specific customer, Nextlink would send an order to USWC requesting USWC to provision specific AIN triggers on that customer's subscriber line. USWC would then process that order, performing the necessary provisioning at its switch.<sup>(29)</sup>

Under Nextlink's proposal, once the appropriate AIN trigger has been provisioned on the customer's line, the USWC switch would then recognize that a call originating from that line requires the USWC switch to launch a query to the Nextlink network for additional call processing information. The Nextlink SCP would receive the query from the USWC switch and return a response, providing the call processing information necessary to perform the AIN service requested by Nextlink, to the USWC switch.<sup>(30)</sup>

One of the primary services Nextlink proposes to provide via AIN triggers is voice-actuated information retrieval, such as a list of calls, stock quotes, voice mail, etc. Nextlink could even provide such a voice-actuated service to USWC customers by the use of a special dialing code.<sup>(31)</sup>

##### B. Positions of the Parties

## 1. Technical Feasibility

*USWC's Position:* USWC emphasizes that Nextlink wants access to AIN triggers so that it can connect its SCP (i.e. database) to the US WEST signaling system. USWC argues that neither access to AIN triggers nor interconnection of a third-party SCP with an incumbent LEC's signaling system is technically feasible at this time.

USWC asserts that the FCC has already considered the subject matter and found that access to AIN triggers has not been shown to be technically feasible and, therefore, rejected a request identical to that made by Nextlink in this arbitration, citing *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 (1996) (First Report and Order).

In the First Report and Order, the FCC stated:

We find that there is not enough evidence in the record to make a determination as to the technical feasibility of interconnection of third party call-related databases to the incumbent LEC's signaling system. . . . At this time, in view of this record and the record compiled in the *Intelligent Networks* docket, we cannot make a determination of the technical feasibility of such interconnection.<sup>(32)</sup>

Such interconnection must be made via AIN triggers.

USWC notes that although the FCC did not preempt a state commission from making its own determination, USWC insists that nothing of a technical nature has changed since the First Report and Order was issued to make such access or interconnection technically feasible, and Nextlink has failed to provide any new information to establish such feasibility. USWC also asserts that at least one other regulatory agency, the Arizona Corporation Commission, has declined to give CLECS access to the triggers.

USWC argues that here are a number of significant technical issues that prevent interconnection of Nextlink's SCP or call-related database with the USWC signaling network. One technical issue is the lack of sufficient mediation between Nextlink's SCP and US WEST's SS7. According to USWC, his lack of sufficient mediation would leave USWC's switch, and potentially the entire network, vulnerable to a multitude of harms. USWC would have no control over the data, information or protocol used by Nextlink to populate its call-related database. Should that data, information, or protocol be incomplete, inaccurate, incompatible, or otherwise defective, it would traverse the US WEST signaling system and enter the central office switch. The end result could be disastrous.<sup>(33)</sup>

USWC argues further that Nextlink has not demonstrated that any system to filter out corrupted data exists or is in the offing, despite its claim that such a system could solve any corruption problems.

USWC argues that a further problem derives from the limitation that a switch trigger can only be assigned to one provider. USWC offers as an example the Off Hook Immediate (OHI) trigger, which is activated when a customer picks up the receiver, and the impact on reliable 911 service. If the OHI trigger were to be assigned to Nextlink, a query would be sent to Nextlink's SCP (or wherever Nextlink directed) for call processing instructions whenever the customer picked up the receiver. USWC, it claims, would not be able to provide reliable access to 911 emergency services, since it would no longer be providing call processing instructions.

Finally, USWC argues that there are also significant problems to be anticipated with feature interaction. If two different carriers are providing the same customer a different set of features, how does one ensure that the various features will be compatible; even if compatible, how are the features prioritized? Nextlink's proposal would leave many of these important practical considerations unresolved, since USWC would no longer have full control over its network.

*Nextlink's position:* Nextlink argues that In implementing any AIN-based service, Nextlink would work directly with US WEST to ensure that the service would work as intended without negative impact on either carrier's network. According to Nextlink, this would not differ from similar testing procedures employed before the use of other network elements to serve customers. Currently, Nextlink and USWC must work together to implement many projects involving interconnection or access to unbundled network elements. Neither carrier would, for example, move forward to implement permanent number portability if it posed a threat to either carrier's network.

Nextlink has no interest in negatively impacting either carrier's network because it would harm Nextlink's reputation with consumers. If USWC believed that the implementation of a specific Nextlink AIN-based service would create problems, there would be multiple opportunities for USWC and Nextlink to resolve such issues during the testing and implementation of the service. Because Nextlink is not interested in providing services that would negatively impact anyone's customers, USWC would always have an opportunity to demonstrate that a specific request for an AIN trigger would not be technically feasible.

Nextlink asserts that AIN triggers are, like unbundled loops, a bottleneck facility without which Nextlink cannot offer competitive AIN alternatives to Utah consumers. Nextlink argues that the FCC has already recognized that "AIN-based services are important to a new entrant's ability to compete effectively for customers with the incumbent LEC and in developing new business by introducing new AIN-based services." 11 FCC Rcd

15749. Nextlink, with access to AIN triggers, will be able to compete with US WEST to provide new and innovative services. If the Commission denies Nextlink's request, only US WEST will have the ability to provide AIN-based services to the vast majority of Utah consumers.

### C. Discussion

Access to the AIN triggers is the single most vexed issue in this arbitration proceeding. While we are impressed by Nextlink's proposed voice-actuated service, we are unable to bring ourselves to open up USWC's network to alien control to the extent desired by Nextlink. Obviously, USWC is making, once again, a strong appeal to FUD. However, in this context, we must agree that USWC's concerns are well-founded. Our conclusion is buttressed by the FCC's action in refusing to open the door Nextlink seeks and referring the matter to further consideration in a pending rulemaking proceeding.<sup>(34)</sup> We are unwilling, at this juncture, to make the Utah network the test bed for Nextlink's proposed service. We credit fully Nextlink's good faith in advancing the proposal, and the confidence of Nextlink's technical personnel in the feasibility of the proposal. However, we are unwilling to subject Utah customers to the potentially disastrous results of what could be unwarranted *hubris*.

We are unhappily aware that in reaching this conclusion we are severely attenuating USWC's incentive to work with Nextlink to solve the network security issues raised by USWC. Consequently, all customers in USWC's service area stand to suffer the loss of potentially valuable new AIN-based services.

Accordingly, we hereby serve notice that we expect USWC to work cooperatively (and without requiring Nextlink to jump through unnecessary procedural hoops) with Nextlink to solve the technical problems raised by USWC, or to allay the concerns if they are in fact chimerical. Absent such efforts, should this issue re-emerge in a subsequent arbitration proceeding, we may not be so disposed to accede to USWC's concerns. But for now, language omitting any requirement that USWC afford access to AIN triggers should be adopted.

## USWC'S PROVIDING RATES ON CUSTOMER SERVICE REQUEST

### A. Background

In the past, USWC has, at a customer's request, furnished Nextlink a complete list of charges for USWC service. USWC now proposes to discontinue this practice, and Nextlink is insistent that it continue. Nextlink has been accessing the information through USWC's Operations Support System (OSS). It does so through a computer connection known as interconnection mediated access or IMA. The way it advises US WEST that it has a customer Letter of Authorization (LOA) to disclose customer billing information is by checking a box on a computer screen. When Nextlink accesses a customer service record in this manner, USWC does not receive an LOA from the customer.<sup>(35)</sup>

### B. Positions of the Parties

#### 1. Technical Feasibility

There is no issue of technical feasibility, although USWC claims that compliance would entail enhanced expense, for which it would not be compensated, and Nextlink maintains that, absent compliance, it would have a corresponding expense.

#### 2. Legal Requirements

*USWC Position:* USWC asserts that, in response to a request for a customer service record, it is willing to agree, subject to the terms of a LOA from the customer, to provide a listing of the services and features USWC is currently providing to the customer. USWC asserts further that in addition, through a Service Availability Inquiry, Nextlink may obtain detailed information by wire center of what services are available and their recurring and non-recurring rates. According to USWC, it would have to bear a significant administrative burden in order to meet Nextlink's request in the form Nextlink wants it. USWC particularly objects because it would entail disclosure of rate information for customers under competitive contracts.

USWC argues that it is not obligated under the Act to provide the information Nextlink seeks in the form Nextlink wants it. In addition, competitive contracts are filed with the Commission under protective order. Even if a customer knowingly waives the confidentiality of the contract, it contains information that is competitively sensitive from USWC's perspective and that USWC should not be required to disclose. USWC argues from a fairness perspective that while Nextlink regards its own competitive contracts as competitively sensitive and proprietary, it wants to deprive USWC of the ability to treat this information the same way. Finally, argues USWC, the Federal act contemplates that Nextlink will gain access to customer service records through USWC's OSS. That system does not have the information in the form Nextlink wants it, and USWC is not required to design its OSS according to Nextlink's specifications.

USWC notes that if a customer wishes Nextlink to have access to its rates, it is possible that it can provide the appropriate portions of its bill to Nextlink as easily as it provides a LOA. Nextlink's form LOA allows Nextlink to look at all customer account information.

USWC argues that it is not obligated under the Federal Act to provide the information on customer service records in the form Nextlink wants it. With respect to access to customer service information, the Act contains only two requirements. The first is that "[e]very telecommunications carrier

has a duty to protect the confidentiality of proprietary information of . . . other telecommunications carriers . . . and customers ." 47 USC. § 222(a).

USWC acknowledges an obligation to disclose information contained in a customer's bill pertaining to telephone exchange or toll service to the customer or a designated representative of the customer upon receipt of an affirmative written request from the customer. 47 USC. § 222(c)(2) and (f)(1)(B). However, USWC disputes that obligation means that USWC is required to provide Nextlink with the information it wants in the form it wants it simply because Nextlink represents to USWC on a computer screen that it has an LOA that authorizes release of any and all customer information. In the slamming context, the FCC has required verification, in addition to an LOA, to ensure that the customer's wishes are accurately represented. 47 CFR. §§ 64. 1000. In addition, argues USWC, Nextlink failed to note the requirement of subsection 222(b) which provides that:

A telecommunications carrier that receives or obtains proprietary information from another carrier for purposes of providing any telecommunications service shall use such information only for such purpose, *and shall not use such information for its own marketing efforts.* 47 U.S.C. § 222(b) (emphasis added)

There is no dispute that Nextlink wants this information to use in its own marketing efforts. This use of proprietary information is expressly prohibited by the Act.

USWC also argues that there is nothing in state law requiring USWC to disclose the terms of competitive contracts to Nextlink just because a customer provides a LOA. Contrariwise, since competitive contracts are filed under protective order, they may only be publicly disclosed if the providing party USWC stipulates to their disclosure, or, on request of one of the parties to the docket, this Commission orders that they are not confidential. For sound competitive reasons, USWC is not willing to stipulate that this competitively sensitive information may be released.

USWC notes that If a customer wishes to share some or all of its rates for services and features with Nextlink, it is free to do so. 47 U.S.C. § 222(b) does not preclude a customer from releasing its own rate information to Nextlink.

*Nextlink's Position:* Nextlink cites Section 222 of the Federal Telecommunications Act, as amended, directing that common carriers furnish competitive carriers with information about customer services, rates, usage patterns and other customer proprietary network information (CPNI) upon affirmative written request by customers. 47 U.S.C. 222(c)(2) and (f)(1). Nextlink claims that the statute enables customers to authorize competitive carriers like Nextlink to obtain and analyze complex data about their current services so that customers can make informed comparisons about services and rates available from competing carriers relative to their current carrier.

Nextlink claims that until very recently, USWC cooperated in responding to customer requests authorizing Nextlink to obtain Customer Service Records (CSR) by providing not only phone numbers and service types, but also the rate elements and the rates for each individual element.

However, since early January 1999, USWC has refused to furnish rate information in its CSR's. Instead, information about rates allegedly was moved from the CSR to the preordering screen on the Service Availability Query feature on US WEST's computerized ordering process, which, Nextlink asserts, is a far more cumbersome process from the customer's perspective, and a process, moreover, that Nextlink has not yet found will even work.

Nextlink argues that USWC's problems with re-programming its OSS systems are of its own creation in developing such systems that systematically exclude rate information which was previously furnished to Nextlink with CSR's as a matter of course. Nextlink asserts that here can be no justification for requiring Nextlink to use such a defective OSS or to reimburse USWC for the costs of decoding its OSS system which was coded expressly to exclude Nextlink's competitive access to information it is statutorily entitled to see.

Nextlink asserts that it seeks nothing radical, but merely an order restoring the *status quo ante*, under which USWC regularly furnished complete customer rate information in response to customer service requests.

### C. Discussion

We note that Nextlink does not address the effect of 47 USC § 222(b), nor does it address the issue of contracts filed with this Commission under protective order.

It may be true that having the customer provide the data Nextlink seeks is more cumbersome and time consuming than simply dialing into USWC's computer system, but that does not render the information unavailable -- it only entails a greater degree of cooperation from the prospective customer. We do not conceive that puts Nextlink at an insurmountable competitive disadvantage.

The security issues raised by USWC also resonate with us. In a recent Docket, we dismissed the complaint of an interexchange carrier against USWC for refusing to change a customer's designated primary long distance carrier without customer verification if that customer had a PIC freeze on her or his service.<sup>(36)</sup> It seems to us that *a fortiori* verification should be required when sensitive customer information is involved.

In sum, we believe the Federal Act prohibits the unfettered rate information access sought by Nextlink, as does our own practice in issuing protective orders for individual contracts. Moreover, we believe the better public policy is to leave control of such information in the hands of the consumer. We believe USWC's position on this issue should be adopted; however we have found no language in the contract draft on file with this Commission implementing it. If the parties are unable to agree on language consistent with this arbitration award, they may submit their proposals for Commission approval.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that the arbitration award be, and it is, made in favor of Nextlink Utah, Inc., on the issues of alternate route SS7 access; extended loop access; and SPOT frame access; and that the arbitration award be, and it is, made in favor of US West Communications, Inc., on the issues of AIN trigger access and access to Customer rate information.

DATED at Salt Lake City, Utah, this 23rd day of March, 1999.

/s/ A. Robert Thurman  
Administrative Law Judge

Approved and Confirmed this 23rd day of March, 1999, as the Report and Order of the Public Service Commission of Utah.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Clark D. Jones, Commissioner

Attest:

/s/ Julie Orchard  
Commission Secretary

1.

In the interest of completing this Order within the time allotted, in presenting the parties' positions, the Administrative Law Judge has quoted extensively from the parties' briefs without full attribution. The Administrative Law Judge trusts the parties counsel will forgive him this acknowledged plagiarism.

2. Prefiled Testimony of Bradley Baxter (hereafter "Baxter") at 2-4.

3. *Ibid.* USWC disputes, without further elaboration, that it has the extra redundancy Nextlink claims. Even if that is true, given USWC's orders of magnitude greater customer base, SS7 signal loss may not be as catastrophic for USWC as it is for Nextlink. However, as discussed hereafter, we deem that immaterial to the resolution of the dispute.

4.

*Id* at 6.

5.

Although the physical connection of links or trunks is technically feasible, the ability of the two networks to communicate with one another is unknown. USWC Post-hearing Brief (hereafter "USWC Brief") at 16.

6.

USWC Brief at 17.

7.

Nextlink Brief at 6.

8.

Baxter at 7-8.

9.

USWC Brief at 19-20.

10.

Nextlink Brief at 7.

11.

Iowa Utilities Board, *et al*, v. FCC, \_\_\_ U.S. \_\_\_, 1999.

12.

47 CFR 51.

13.

6.7.8 The Parties will interconnect their networks using SS7 signaling as defined in GR-317 and GR-394, including ISDN User Part ("ISUP") for trunk signaling and Transaction Capabilities Application Part ("TCAP") for CLASS-based features in the interconnection of their networks. USWC shall provide A-Link connection to USWC STPs for the purpose of SS7 signaling between NEXTLINK and USWC. In addition to A-Link connectivity, USWC shall provide primary and alternate SS7 message routing between USWC and NEXTLINK. The purpose of such primary and alternate SS7 message routing is to provide and maintain the highest possible level of network reliability between the USWC and NEXTLINK interconnecting networks. All appropriate industry standards for signaling interoperability will be followed. The NEXTLINK SS7 network configuration is attached as Appendix B to this Agreement.

14.

USWC Brief at 27.

15.

Nextlink Brief at 10

16.

[ILECS have] The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network-

\* \* \*

(B) *at any technically feasible point within the carrier's network;*

(C) *that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and*

(D) *on rates, terms, and conditions that are just, reasonable, and nondiscriminatory . . . . 47 USC 251(c)(2). (Emphasis added.)*

17.

7.1.7 Telecommunications interconnection between NEXTLINK's collocated equipment and USWC's network may be accomplished via the SPOT bay or an EICT. This element can be at the DS-3, DS-1, DS-0, or any other level in the digital hierarchy subject to network disclosure requirements of the FCC, depending on the USWC service to which it is connected.

7.5.1.4 The SPOT frame will be the location where all USWC unbundled Network Elements and USWC's equipment are terminated for combination of USWC unbundled network elements. NEXTLINK may run jumpers on the SPOT frame to make connections in three basic types of configurations:

USWC unbundled Network Elements to USWC unbundled Network Elements

## USWC unbundled Network Elements to NEXTLINK's equipment

NEXTLINK's equipment to another Co-Provider's equipment Use of the SPOT frame by NEXTLINK shall only be required when NEXTLINK is combining a switching component provided by USWC with other USWC-provided unbundled Network Elements to replicate a USWC finished service.

8.5.1.2 Unbundled Loops include the facilities between the USWC distribution frame up to and including USWC's NID located at NEXTLINK's end user premises. The connection between the distribution frame and NEXTLINK facilities may be accomplished by ordering the applicable EICT.

Loops will be provided by USWC in accordance with the specifications, interfaces and parameters described in generally accepted industry standards and, where conditioned if necessary, and at the appropriate charge, will allow NEXTLINK to provide the following types of loops: USWC's obligation is to provide and maintain Unbundled Loops in accordance with such specifications, interfaces and parameters.

USWC does not warrant that Unbundled Loops are compatible with any specific facilities or equipment or can be used for any particular purpose or service that do not comply with the appropriate technical reference publication Transmission characteristics may vary depending on the distance between NEXTLINK's end user and USWC's end office and may vary due to characteristics inherent in the physical network. USWC, in order to properly maintain and modernize the network, may make necessary modifications and changes to the Network Elements in its network on an as needed basis. Such changes may result in minor changes to transmission parameters. Any such changes that may affect network interoperability require advance notice pursuant to the Notice of Changes section of this Agreement. (Continued to next page)

8.6.3.2 The Loop Concentrator/Multiplexer shall provide an analog voice frequency copper twisted pair equivalent at the SPOT bay or EICT (at NEXTLINK's request) at the USWC Central Office interface at the serving wire center.

18.

The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service. *Id.*

19.

47 CFR § 51.315(d).

20.

Report and Order, Dockets No's 96-087-03 and 96-095-01 (PSC Utah 1998).

21.

8.1.3 USWC will not restrict the types of Telecommunications Services NEXTLINK may offer through unbundled elements, nor will it restrict NEXTLINK from combining elements with any technically compatible equipment NEXTLINK own. USWC will provide NEXTLINK with the same features, functions and capabilities of a particular element that USWC provides to itself, so that NEXTLINK can provide any Telecommunications Services that can be offered by means of the element. USWC shall provide Private Lines for single channeled transport from NEXTLINK collocated space to USWC end offices. NEXTLINK may order and USWC shall provision unbundled Network Elements either individually or in any combination on a single order. Network Elements ordered as combined shall be provisioned as combined.

USWC shall offer each Network Element individually and in combinations with any other Network Element or Network Elements in order to permit NEXTLINK to combine such Network Element or Network Elements obtained from USWC or with network components provided by itself or by third parties to provide Telecommunications Services to its subscribers. NEXTLINK may purchase unbundled Network Elements without restrictions as to how NEXTLINK may rebundle those elements.

8.2.2.1 Dedicated Transport is an interoffice transmission path between NEXTLINK-designated locations to which NEXTLINK is granted exclusive use. Such locations may include USWC central offices, NEXTLINK network locations, other carrier network locations, or subscriber premises. USWC shall offer Dedicated Transport in each of the following manners:

8.2.2.1.1 as capacity on a partitioned facility

8.2.2.1.2 as a circuit (e.g., DS-1, DS-3, STS-1) dedicated to NEXTLINK; and

8.2.2.1.3 as a system (i.e., the equipment and facilities used to provide Dedicated Transport such as SONET ring) dedicated to NEXTLINK.

8.2.2.2 "DS0/DS1/DS3 Service" is a channel which enables NEXTLINK, when it is physically collocated in a given USWC central office, to access unbundled links served from another USWC central office. Upon NEXTLINK's request, USWC shall provide transport and loops, including, if necessary, multiplexing, cross-connects and any other necessary facilities to NEXTLINK at USWC's central offices where NEXTLINK is not collocated. The unbundled transport and loops shall be provisioned at the DS-0, DS-1 or DS-3 level at NEXTLINK's request. USWC shall provide this service to NEXTLINK at the Commission-approved rates for each individual network component involved.

22.

Baxter at 11.

23.

*Ibid.*

24.

In terms of the Administrative Law Judge's understanding, as an amateur computer programmer, of the concept, AIN triggers appear to function analogously to software interrupts under the MS DOS® PC operating system.

25.

Baxter at 12.

26.

*Ibid.*

27.

*Ibid.*

28.

*Ibid.*

29.

*Ibid.*

30.

Baxter at 14.

31.

*Id.* At 14-15.

32.

<sup>32</sup>First Report and Order, ¶¶ 501 and 502.

33.

Having himself blown up more than a few PC operating systems with corrupted data structures, the Administrative Law Judge can only say "amen."

34.

"On January 30, 1998, the Commission released the Computer III Further Notice, which proposes to revise the safeguards under which the Bell Operating Companies provide information services in light of the requirements of the 1996 Act." Order, CC Docket 91-346 (1998).

35.

Testimony of Laura L. Scholl, Transcript 273-274.

36.

In the Matter of the Complaint of Telsave, Inc., v. USWC, Docket No. 98-049-20 (PSC Utah 1998).