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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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In the Matter of the Commission Investigation)
into the Treatment of Reciprocal Compensation)
for Internet Service Provider Traffic.)

Case No. 99-941-TP-ARB

PUCO

**AMERITECH OHIO'S NOTICE OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF
AMERITECH OHIO'S BRIEF IN SUPPORT OF THE COMMISSION PROCEEDING
WITH THIS GENERIC ARBITRATION**

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Ameritech Ohio, by its attorneys, respectfully submits this Notice of Supplemental Authority In Support of Ameritech Ohio's Initial and Reply Briefs in support of the Commission proceeding with this generic arbitration.

On May 5, 2000, following an evidentiary hearing, the Colorado Public Utilities Commission issued a decision¹ holding that reciprocal compensation is **not** appropriate for the exchange of ISP traffic, regardless of whether such traffic is viewed as local or interstate. Properly construing the D. C. Circuit's ruling in *Bell Atlantic*² as no impediment to its decision, the Colorado Commission ordered the parties to employ "bill and keep" for ISP traffic. Consistent with Ameritech Ohio's position in this proceeding, the Colorado Commission decided several significant legal, economic, and policy issues in reaching this conclusion, including the following:

- The *Bell Atlantic* decision does not affect state commissions' authority to determine an intercarrier compensation mechanism for ISP traffic and certainly does not require state commissions to grant reciprocal compensation on such traffic. (pp. 5, 10-18).
- Since an ISP call is interstate in nature, reciprocal compensation with a positive rate is inappropriate. (p. 15).
- The analogy of ISP traffic is closer to the interexchange model, where each LEC works with the long distance carrier to complete a call, rather than a local call where the LECs work only with each other to complete a call. The ILEC and CLEC provide access-like functions to transmit the call to the Internet, similar to providing access to an IXC to transmit an interstate call (pp.14-15).
- Even without employing the IXC analogy, the cost causer principle leads to the same result. The originator of the ISP call, like the originator of the interexchange call, is acting primarily as a customer of the ISP, not the ILEC. The cost causer is the customer of the ISP, not the ILEC. (pp. 14-15).

¹ *In the Matter of the Petition of Sprint Communications Company, L.P. for Arbitration Pursuant to U.S. Code § 252(B) of the Telecommunications Act of 1996 To Establish an Interconnection Agreement with U.S. West Communications, Inc.*, Docket No. 00B-011T(see copy attached).

² *Bell Atlantic Telephone Co. vs. F.C.C.*, 206 F.3d 1 (D. C. Cir. 2000).

- The FCC's conclusion that ISP bound traffic is not local, "though wanting for explanation" according to the *Bell Atlantic* court, "is ultimately vindicated by an economic analysis of ISP traffic." (p. 18, n. 7).
- However, even if ISP calls were viewed as "local," requiring reciprocal compensation with a positive rate would violate policy and economic principles. (pp. 16, 18, n. 7).
- Reciprocal compensation gives CLECs an unwarranted property right and creates unwanted market distortions (cross-subsidization of CLECs, ISPs and Internet users by the ILEC's customers who do not use the Internet; excessive use of the Internet; excessive entry into the market by CLECs specializing in ISP traffic mainly for the purpose of receiving compensation from the ILECs; and disincentives for CLECs to offer either residential service or advanced services themselves). Reciprocal compensation does not improve overall social welfare; it promotes the welfare of some at the expense of others. (pp. 16-17).
- Bill and keep is free of the problems posed by other inter-carrier compensation alternatives, it treats the ILEC and CLEC symmetrically, and emphasizes the need for various networks to interconnect and for carriers to recover their costs from charges imposed upon their own customers. (pp. 17-18).
- An ILEC is able to differentiate ISP traffic from the traffic subject to reciprocal compensation. (p. 18).

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was duly served, via regular U.S. Mail, postage prepaid, this 11th day of May, 2000, upon the following:

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 Mark S. Stemm

Decision No. C00-479

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 00B-011T

IN THE MATTER OF THE PETITION OF SPRINT COMMUNICATIONS COMPANY,
L.P. FOR ARBITRATION PURSUANT TO U.S. CODE § 252(B) OF THE
TELECOMMUNICATIONS ACT OF 1996 TO ESTABLISH AN INTERCONNECTION
AGREEMENT WITH U S WEST COMMUNICATIONS, INC.

INITIAL COMMISSION DECISION

Mailed Date: May 5, 2000
Adopted Date: May 3, 2000

Appearances:

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I. BY THE COMMISSION

A. Statement

1. Sprint Communications Company, L.P. ("Sprint") initiated this proceeding by filing a Petition for Arbitration on January 12, 2000. Sprint requests that the Commission arbitrate certain terms, conditions, and prices for interconnections and related arrangements with U S WEST Communications, Inc. ("U S WEST"), pursuant to 47 U.S.C. § 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("1996 Act"). U S WEST filed its Response on February 7, 2000. New Edge Networks, Inc., and Advanced TelCom Group, Inc filed petitions to intervene. Those petitions were denied by the Commission in Decision No. C00-173, February 24, 2000.

2. The Commission assigned an Administrative Law Judge ("ALJ") to hear the matter. The ALJ established a procedural schedule which called for the matter to be heard on April 11 and 12, 2000 in Denver, Colorado. Under the 1996 Act, the Commission's decision is due May 5, 2000. Because of this time constraint, the Commission finds that due and timely execution of its functions imperatively and unavoidably require

that the recommended decision of the ALJ be omitted and that the Commission make the initial decision in this proceeding.

3. At the assigned place and time, the ALJ called the matter for hearing. As a preliminary matter, he granted admission pro hac vice to Steven Kukta and Andrew Jones to represent Sprint and John Devaney to represent U S WEST.

4. After negotiation, four items remained to be arbitrated by the Commission. The first, reciprocal compensation, was addressed at hearing. The remaining three issues, issues nos. 2, 3, and 10 from the issues matrix, involved matters concerning unbundled network elements ("UNEs"). By agreement of the parties, the UNE issues will be determined on the basis of the written submissions including testimony admitted by stipulation.

5. The matter then proceeded to hearing. Exhibits 1 through 10 and 12 through 15 were identified, offered, and admitted into evidence. Exhibit 11 was identified, offered, and then withdrawn. At the conclusion of the hearing, the parties were authorized to file posthearing statements of position no later than April 20, 2000. Both Sprint and U S WEST filed timely statements of position..

B. Findings of Fact

1. Reciprocal Compensation for ISP-Bound Traffic

a. This issue involves compensation for traffic that originates on the network of one local exchange carrier ("LEC") and is delivered over the network of another LEC to an Internet service provider ("ISP"). The ISP then provides services by transmitting the data to and from the Internet. The Federal Communications Commission ("FCC") has indicated that State commissions may determine, compensation between carriers for this type of traffic under § 252 of the 1996 Act. *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 and Inter-Carrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98, 99-68, Declaratory Ruling in CC Docket 99-68, 14 FCC Rcd 3689 ¶¶ 25-27 (Feb. 26, 1999) ("Declaratory Ruling"). The FCC had determined that Internet calling is interstate in nature for jurisdictional purposes. *Id.* at ¶ 12. However, the decision of the FCC has been vacated by the U.S. Court of Appeals. *Bell Atlantic Telephone Co. v. F.C.C.*, 206 F.3d 1 (D.C. Cir. 2000). Despite this vacating of the FCC decision, the parties to this proceeding agree that this Commission has the authority to set a compensation rate for ISP-bound traffic.

b. According to U S WEST, § 251(b)(5) allows reciprocal compensation for local traffic only. U S WEST argues

that ISP traffic is interstate, not local, in nature; therefore, this traffic is not subject to reciprocal compensation under the Act.

c. U S WEST correctly notes that the FCC has ruled that ISP traffic is primarily interstate in nature. In the Declaratory Ruling, the FCC held that, notwithstanding the interstate nature of ISP calls, state commissions may still mandate reciprocal compensation for this traffic in § 252 arbitrations. Declaratory Ruling, ¶¶ 25-27. By the same token, the FCC determined, state commissions "are free not to require the payment of reciprocal compensation for this traffic and to adopt another compensation mechanism." Declaratory Ruling, ¶ 26.

d. In *Bell Atlantic*, the D.C. Circuit vacated the FCC's holding that ISP traffic is not local, but interstate in nature. The court ruled that the FCC failed satisfactorily to explain its reasons for concluding that delivery of calls to ISPs does not constitute termination of local telecommunications traffic under the Act. Although the court vacated the Declaratory Ruling to the extent it found ISP calls to be interstate in nature, the court did not address the FCC's holding that state commissions are authorized to determine the intercarrier compensation mechanism for such traffic in § 252 proceedings. See *Bell Atlantic*, 206 F. 3d at 9.

2. Sprint's Position

a. Sprint argues for compensation at the local end-office termination rate, which is \$0.00283 per minute. It notes that it incurs costs to provide the service, and without some compensation from U S WEST those costs will go unrecovered. This will keep it from competing for this type of local traffic, and is thus anticompetitive. Inasmuch as the compensation is reciprocal, U S WEST would be compensated for traffic which originates on Sprint's network and terminates at an ISP served by U S WEST. Sprint also rejects the notion of singling out Internet traffic because there are many types of local traffic that exhibit similar characteristics which are not singled out. Sprint points to such examples as telecommuters who log onto a local area network ("LAN") for an extended period of time, radio talk show call in numbers, and governmental help lines.

b. Sprint concedes that its cost structure will be different from U S WEST's since its network structure is different. It argues that a competitive local exchange carrier ("CLEC") such as Sprint will have lower call volumes at the beginning and hence a higher per unit cost than an incumbent local exchange carrier ("ILEC") such as U S WEST. Sprint concedes that with state-of-the-art technology it will likely be able to build a network without deploying as many switches as an

ILEC. It seeks to have the local end-office termination rate utilized for the reciprocal compensation rate.

c. Sprint claims that Internet traffic cannot currently be distinguished from other categories of telephone calls. It suggests that, at present, attempting to separately identify and measure ISP-bound traffic will be of little value and expensive.

d. Sprint notes that the Commission in prior cases has ordered termination compensation for other CLECs for ISP traffic, and argues that failure to take the same action here would constitute unlawful discrimination. Sprint primarily points to the ICG complaint case¹ in which we directed U S WEST to pay termination compensation to ICG for ISP calls.²

3. U S WEST's Position

a. U S WEST opposes the payment of reciprocal compensation for ISP traffic. In U S WEST's view, ISP traffic is not local but is analogous to long distance traffic. U S WEST suggests that the FCC's Declaratory Ruling finding Internet traffic to be substantially interstate in nature was unaffected by the Court of Appeals' vacating of the that order. It further analogizes ISP-bound traffic to paging traffic. It notes that

¹ *ICG Telecom Group, Inc. v. U S WEST Communications, Inc.*, Docket No. 98F-299T.

this Commission has previously held that reciprocal compensation makes little or no sense when traffic is strictly one-way.

b. U S WEST views the cost-causer as the ISP, not the party originating the Internet call. It notes the different characteristics of Internet calls from other local calls: the calls last several times longer than voice calls and the calls are one-way because ISP modems do not call out. U S WEST notes that at the current local end-office termination rate of \$0.00283 per minute, one hour of Internet usage by one customer each day for a month would result in \$5.10 per month of compensation at the existing voice rate. U S WEST suggests this is clearly excessive given that it receives only about \$15 per month for providing local exchange service.

c. U S WEST claims that the proper analysis is to view Internet calls (calls to ISPs) using a long distance paradigm rather than a local paradigm. In U S WEST's view, an ISP is more like an interexchange carrier ("IXC"). While an IXC connects a local customer to someone in a different exchange area for a voice call, an ISP connects a local customer's computer to a computer which may be located anywhere in the world. The IXC arranges all the intermediate steps and pays

² The other case Sprint relies on is the MFS/ U S WEST arbitration, Docket No. 96A-287T. See Decision Nos. C96-1185 (Mailed Date of November 8, 1996), page 30.

whatever it has to, to complete the call, charging only the end user. When there are several carriers carrying an interexchange call for the IXC, they all split the revenue. U S WEST suggests that a similar approach is more appropriate for ISP traffic. It notes that the traffic would not be present but for the ISP. The ISP receives compensation from the end user, its customer. In U S WEST's view the ISP should be compensating the carriers that bring calls to the ISP, just as the ISP compensates the providers that take the call out on the Internet.

d. Because the FCC exempts ISPs from paying access charges, U S WEST argues that the next best approach is for the CLEC to share some of the revenues it receives from the ISP with the ILEC in proportion to the relative costs which the ILEC and CLEC incur. This approach addresses the situation in which the call originates on the ILEC's network and is then transferred to the CLEC's network for the purpose of connecting with the customer's ISP. As a third-best, interim solution, U S WEST recommends bill and keep where ISP traffic is exchanged between the ILEC and the CLEC but without any exchange of compensation.

e. In the alternative, should this Commission determine that some compensation should be paid to a CLEC for calls originating on an ILEC's network destined to an ISP on a CLEC's network, U S WEST suggests that the local end-office

termination rate which is contained in its tariffs for voice traffic is too high. U S WEST argues that the voice rate set by this Commission is not reflective of costs for a data network such as Sprint would provide in the future. Sprint's costs would be lower. It also argues that the rate component that recovers the fixed cost of a voice call (call set up) was designed to recover that cost over a shorter period of time typical of a voice call. Thus, the longer Internet calls would over-recover fixed costs.

f. U S WEST finally suggests that reciprocal compensation will cause an over-investment in facilities to serve dial up modems of ISPs. It will also cause a subsidy to flow to those users. In U S WEST's view, reciprocal compensation will inevitably create upward pressure on basic local exchange rates.

C. Commission Decision.

a. We disagree with Sprint's argument that failure to order reciprocal compensation here would be discriminatory in light of the ICG ruling. We likewise disagree that ICG has any preclusive or precedential value here. In the ICG proceeding, we concluded that the existing ICG/U S WEST agreement provided for termination compensation for ISP traffic. See Decision No. C99-898, page 6. While we observed (Decision No. C99-898, pages 6-9) that certain policy considerations

suggested that termination compensation should be paid for ISP calls (e.g. because ISP traffic is exempt from access charges, ICG could not recover its ISP-related costs for terminating those calls without reciprocal compensation), those observations were based upon the record in that case. The ICG/U S WEST dispute came before the Commission on cross-motions for summary judgment. The economic analysis present in this record was not present in the ICG proceeding.

b. Moreover, public policy concerns were not the deciding factors in the ICG proceeding. That case concerned interpretation of an existing interconnection agreement, not arbitration of terms that should be included in such an agreement. We based our directive that U S WEST pay termination compensation to ICG for ISP calls on the existing ICG/U S WEST interconnection agreement's provision for such compensation. See Decision No. C99-898, page 6. Notably, we specifically stated that we might revisit this issue (i.e. the payment of termination compensation for ISP traffic) in future arbitration proceedings:

Given reasonable expectations by ICG that its existing interconnection agreement provided for reciprocal compensation for ISP traffic (above), it is reasonable to order U S WEST to pay compensation at this time. This arrangement may change in the future depending on the FCC's pending rulemaking on this matter, or depending on future § 252 proceedings before this Commission. Whether the continued allowance of reciprocal compensation for ISP-traffic provides

'perverse' economic incentives may be more fully considered at that time for purposes of future interconnection agreement. (footnotes omitted)

(emphasis added) Decision No. C99-898, pages 9-10.

c. The point is that our prior orders mandating reciprocal compensation for ISP calls-Sprint mentions two, the ICG case and the MFS/U S WEST arbitration discussed in the ICG ruling were from the first round of \$ 252 arbitrations before the Commission in 1996 and early 1997. Here, U S WEST correctly observes that in those prior proceedings no one, including the Commission, appreciated the economic ramifications of ordering termination compensation for ISP traffic. For example, the information presented in this case relating to the substantial and growing volume of ISP traffic and the imbalance of that traffic on U S WEST's network as compared to CLECs' networks was not available at that time.

d. The present case is the first fully litigated \$ 252 proceeding after the first round of arbitrations to present the question relating to termination compensation for ISP calls. It is appropriate for the Commission to reconsider, in light of the evidence and argument presented here, whether termination compensation should continue to be paid for calls to the Internet. Our present decision not to require termination compensation for ISP traffic does not discriminate against Sprint. Past interconnection agreements (i.e. the MFS/U S WEST

and ICG/U S WEST agreements) were based upon circumstances existing at that time, and we note that those agreements have expired or will shortly expire. Therefore, the present ruling is not unlawfully discriminatory as compared to past decisions by the Commission.³ As for future interconnection agreements, whether U S WEST will be ordered to pay termination compensation to other CLECs for ISP traffic will, of course, be decided based upon the evidence and argument presented in those cases. If our future decisions on this issue differ from the present one, Sprint may exercise its rights under § 252(i) of the Act to opt into those provisions.

e. The relevant situation is as follows: An end-user, a local exchange customer of U S WEST is a customer of an ISP, which is, in-turn, a local exchange customer of Sprint. When this end-user initiates Internet-bound traffic, the call is transmitted from U S WEST to Sprint, from Sprint to the ISP, and from the ISP to the Internet. Both U S WEST and Sprint incur costs during this process. The Commission must determine, as part of the interconnection agreement between U S WEST and Sprint, how these costs will be recovered.

f. Both parties present scenarios which they

³ A contrary holding that we are bound by the mistakes of past arbitrations is belied by the fact the these agreements are for a limited duration.

contend are analogous to the situation described above. U S WEST offers as an analogy the ILEC-IXC interconnection for the purpose of transmitting an interstate call. In this model, the originator of the call is primarily the customer of the IXC and the IXC charges the customer for the call. The IXC then turns around and compensates the LECs, which originate and terminate the call. In the situation of interest here, U S WEST argues that the ISP plays a role analogous to that of the IXC. Sprint, on the other hand, favors an analogy involving ILEC-CLEC interconnection for the purpose of transmitting a local call. The originator of the call in this analogy is a customer of the ILEC and the ILEC charges the customer for the call. The ILEC then compensates the CLEC for the costs it incurs in terminating the call. Articulating the parties' positions more succinctly, U S WEST contends that the Internet-bound traffic being considered here is an interstate call, whereas Sprint believes it to be a local call.

g. The Commission finds that U S WEST's analogy is the more reasonable. Given that most Internet calls end at locations out of state, it appears that such calls are primarily interstate in nature. We view the originator of the Internet-bound call as acting primarily as a customer of the ISP, not as a customer of U S WEST. Both U S WEST and Sprint are providing access-like functions to transmit the call to the Internet,

similar to what their role would be in providing access to an IXC to transmit an interstate call. Furthermore, the remote hubs to which Internet-bound traffic is directed are often outside the state in which the call originated. Beyond that, the ultimate destination of these calls is some web site, which is generally in another state or even another country.

h. The ILEC-IXC interconnection analogy suggests that the ISP should compensate both U S WEST and Sprint for the costs they incur in transmitting this call. Even if that analogy were not employed, applying the principle of cost causation would lead to the same conclusion, namely, that the ISP should pay access charges to both U S WEST and Sprint for the cost caused by the ISP customer. The ISP would recover these charges from that customer. This option, however, is precluded by the FCC's access charge exemption for ISPs.⁴ Therefore, both U S WEST and Sprint are in the position of having to recover the costs of carrying this Internet-bound traffic through some means other than access charges.

i. Sprint recommends that cost recovery be done through the process of reciprocal compensation. In the scenario being considered here, since the end-user originating the

⁴ By granting this exemption, the FCC has given the ISPs a valuable property right. The importance of clearly defining property rights was analyzed in a path-breaking article by R. H. Coase ("The Problem of Social Costs," Journal of Law and Economics, Vol. 3, 1960, pp. 1-44).

Internet-bound call is a local exchange customer of U S WEST, U S WEST would have to compensate Sprint for the latter's costs incurred in transmitting the call to the ISP. The Commission rejects the use of reciprocal compensation with a positive rate in this instance.

j. While ISP calls appear to be interstate in nature, our conclusion is not necessarily based upon that determination. Even if this traffic were considered to be local in nature, the Commission still would not embrace reciprocal compensation with a positive rate. Such a scheme would, in our view, bestow upon Sprint an unwarranted property right, the exercise of which would result in decidedly one-sided compensation. In addition, we find that reciprocal compensation would introduce a series of unwanted distortions into the market. These include: (1) cross-subsidization of CLECs, ISPs, and Internet users by the ILEC's customers who do not use the Internet; (2) excessive use of the Internet; (3) excessive entry into the market by CLECs specializing in ISP traffic mainly for the purpose of receiving compensation from the ILECs;⁵ and (4) disincentives for CLECs to offer either residential service or

⁵ The North Carolina Commission recently put an end to a "sham CLEC" operation that underscores the profitable arbitrage possibilities created by ordering reciprocal compensation. See *In the Matter of Bell South Communications, Inc. v. US LEC*, Docket P-561, sub 10, Order Denying Reciprocal Compensation (N.C. P.U.C. March 31, 2000).

advanced services themselves. In short, we agree with U S WEST that reciprocal compensation for ISP traffic would not improve overall social welfare; it would simply promote the welfare of some at the expense of others. See, *Complaint of MCI Worldcom, Inc against New England Telephone and Telegraph Co.*, D.T.E. 97-116-C Order (Mass. Dept. of Telecommunications and Energy May 1999) ("[T]he benefits gained through this regulatory distortion by CLECs, ISPs and their customers do not make society as a whole better off, because they come artificially at the expense of others.").

k. U S WEST suggests that, because the ISP cannot be required to pay access charges, a second-best solution would be for Sprint to share the revenues it obtains from the ISP with U S WEST, in proportion to Sprint's and U S WEST's relative costs incurred in transmitting this call. The Commission rejects this suggestion as well. We agree with Sprint that this is the equivalent of imposing access charges on the ISP, an option which is precluded by the FCC exemption.

l. The only remaining suggestion offered by either party is the application of bill and keep, whereby, in effect, Internet-bound traffic would be transmitted between U S WEST to Sprint without monetary compensation flowing in either direction. This possibility is offered by U S WEST as its third-best alternative. The Commission finds that bill and keep

should be adopted here to deal with ISP traffic. Notably, bill and keep avoids the problems found with the other proposed solutions, as stated above. In particular, it treats U S WEST and Sprint symmetrically. Moreover, the Commission believes that a bill and keep approach is appropriate because it emphasizes the need for various networks to interconnect and for carriers to recover their costs from charges imposed upon their own customers.⁶

m. In adopting bill and keep, the Commission believes that U S WEST will be able to differentiate ISP traffic from the traffic between U S WEST and Sprint that is subject to reciprocal compensation. Such differentiation is necessary because the two types of traffic will be treated differently. The procedure for differentiating the two was explained by witnesses for U S WEST, and we find this method to be reasonably designed to measure ISP traffic.⁷

⁶ As we move forward, correctly, to the consideration of globally connected communications networks, we need to abandon the archaic approaches to service categorization and regulatory jurisdiction. Regardless of technology or purpose, universal access to equitable connections should be the goal. Whether a call is local, interstate, voice, data, wireless, internet or wireline should not be a determining factor in how the activity is regulated, priced or compensated.

⁷ We have concluded that Sprint is not entitled to reciprocal compensation for ISP-bound traffic for the reasons stated above. Notwithstanding the D. C. Circuit's vacation and remand of the Declaratory Ruling, we believe that the FCC correctly concluded that ISP-bound traffic is interstate and thus not "local telecommunications traffic". The FCC's conclusion, though wanting in explanation, is ultimately vindicated by an economic analysis of ISP traffic. In addition, even if ISP traffic were determined to be local, the policy and economic considerations discussed above indicate that it should not be subject to reciprocal compensation.

1. UNE Issues

a. Issues nos. 2, 3, and 10 submitted for arbitration relate to UNEs. Issues nos. 2 and 3 involve the question to what extent U S WEST is required to combine UNEs at the request of Sprint. Sprint suggests that U S WEST be obligated to combine UNEs in any manner in which UNEs are ordinarily combined within U S WEST's network, provided that such combination is technically feasible and would not impair the ability of other carriers to obtain access to UNEs or to interconnect with U S WEST's network. U S WEST argues that it should not be required to combine UNEs unless the UNE combination is pre-existing or already combined for the particular customer Sprint seeks to serve.

b. Issue no. 10 involves nonrecurring charges for the provision of UNE combinations. Sprint contends that U S WEST is not entitled to a nonrecurring charge for each and every element included in a pre-existing UNE combination. U S WEST on the other hand suggests that it is entitled to recover all nonrecurring charges for each UNE whether the UNE combination already exists or the UNE combination is new. Neither party has explicitly set forth specific nonrecurring charges for UNEs and for UNE combinations.

Hopefully the FCC will consider these factors in future proceedings on this issue.

c. The Commission has previously ruled upon the issue regarding U S WEST's obligation to combine UNEs requested by CLECs.⁸ We have determined that U S WEST should be required to combine UNEs for CLECs in the same manner that it normally combines them for itself. See Decision No. C98-1047. The same result should occur here. We accept Sprint's position and will require U S WEST to combine UNEs in any manner in which UNEs are ordinarily combined within U S WEST's network. U S WEST's position on provision of UNE combinations being limited to those UNEs that are already combined or pre-existing is rejected.

d. This requirement is consistent with the currently effective FCC rule (47 C.F.R. 51.315(b)) regarding combinations of UNEs. Furthermore, we agree with Sprint that its ability to compete in the local exchange market would be impaired under U S WEST's proposal. Therefore, the interconnection agreement between Sprint and U S WEST will require U S WEST to combine UNEs for Sprint in any manner in which they are ordinarily combined within U S WEST's network

e. This Commission has previously addressed the nonrecurring charge for provision of pre-existing UNE

⁸ To the extent U S WEST asserts that our authority to order combinations of network elements is limited because FCC Rules 47 C.F.R. 51.315(c-f) were vacated by the Eighth Circuit Court of Appeals, Iowa Utilities Board v. FCC, 120 F. Ed 753 (8th Cir. 1997), we disagree. We affirm our prior ruling in Decision No. C98-267 that the Commission possesses independent authority under State law to order combinations of network elements.

combinations in the context of the interconnection tariffs of U S WEST. See Commission Decision Nos. C97-739, C97-946, C98-1047 and C98-1250. When the Commission established the interconnection rates, it adjusted the nonrecurring charges to consider bundling. We find U S WEST is entitled to recover all nonrecurring charges as set out in its interconnection tariffs.

II. ORDER

A. The Commission Orders That:

1. The issues presented in the Petition for Arbitration filed by Sprint Communications Company, L.P. on January 12, 2000 are resolved as set forth in the above discussion.

2. Within 30 days of the final Commission decision in this docket, Sprint Communications Company, L.P. and U S WEST Communications, Inc. shall submit a complete proposed interconnection agreement for approval or rejection by the Commission, pursuant to the provisions of 47 U.S.C. § 252(e) of the Telecommunications Act of 1996.

3. The Motion for Leave to File Motion to Strike and Response to Sprint's Late-Filed Notice of Decision submitted by U S WEST Communications, Inc. on May 3, 2000 is granted. Response time to the motion is waived.

4. The Motion to Strike Sprint's Late-Filed Notice of Decision submitted by U S WEST Communications, Inc. on May 3, 2000 is granted. Response time to the motion is waived.

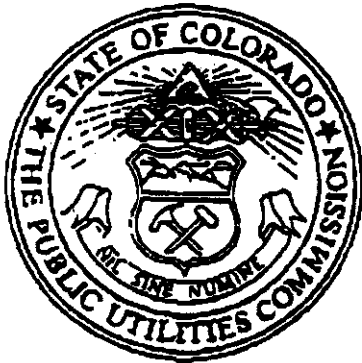
5. The twenty-day period provided for in § 40-6-114(1), C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the Mailed Date of this decision.

6. This Order is effective upon its Mailed Date.

B. ADOPTED IN COMMISSIONERS' DELIBERATIONS MEETING
May 3, 2000.

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO



ATTEST: A TRUE COPY

Bruce N. Smith

Bruce N. Smith
Director

RAYMOND L. GIFFORD

ROBERT J. HIX

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Commissioners