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Blanca Bayó
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Re: Docket No. 000075-TP (Phase II)

Dear Ms. Bayó:

Enclosed for filing on behalf of MCI WorldCom are the original and fifteen copies of the Rebuttal Testimony of Mark Argenbright for Phase II of this docket.

By copy of this letter, this testimony has been furnished to the parties on the attached service list.

If you have any questions regarding this filing, please call.

Very truly yours,

Richard D. Melson

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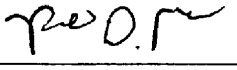

Attorney

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

REBUTTAL TESTIMONY OF MARK ARGENBRIGHT

ON BEHALF OF WORLDCOM

DOCKET NO. 000075-TP

APRIL 19, 2001

Q. Please state your name and business address.

A. My name is Mark E. Argenbright. My business address is Six Concourse Parkway, Suite 3200, Atlanta, Georgia 30328.

Q. Have you previously filed direct testimony in this docket?

A. Yes.

Q. What is the purpose of your rebuttal testimony?

A. I am going to review Issues 11 and 12 for which I previously provided direct testimony. I will briefly summarize the results of the ILEC and ALEC descriptions of their network architectures. Then I will address the ILEC's incorrect interpretation of the FCC's rules with regard to the appropriate method for determining an ALEC's eligibility for compensation at the tandem level. (By compensation at the tandem level, I mean compensation for the tandem switching, transport, and end office switching rate elements.)

Issue 11: What types of local network architectures are currently employed by ILECs and ALECs and what factors affect their choice of architectures?

Q. Have you reviewed the descriptions of the ILEC network architectures provided by Verizon and BellSouth?

A. Yes I have.

Q. What conclusions can you draw in comparing the ILEC network architectures described by these ILECs to your previously provided description of an ALEC's network architecture?

A. Consistent with the point I made in my direct testimony, the ALEC networks and the ILEC networks are different in their physical configurations as well as in their operation. These differences are readily apparent and not in dispute. The more important point for the Commission to consider, however, is the similarity between the two networks in the end results that are provided to consumers.

First, it is possible to identify many similarities in the technical functions that are provided by the ALEC and ILEC networks. For example, BellSouth's Mr. Tolar provides a list of characteristics that are associated with BellSouth's tandem switching systems [Direct Testimony at page 5, ln 2 -9]. Among the characteristics listed are: centralization functions for billing and database access; centralized automatic message accounting points; access to interconnection carriers; and access to operator functions. These are all functions that are performed by the typical ALEC local switch as well. Even though the ALEC and ILEC networks are fundamentally different at a technical level, for comparison purposes it is far more important to consider what *results* are produced by the operation of these different networks.

Q. Please expand on the results comparison you mention.

A. Because the ALEC and ILEC networks are technically different, any exercise to determine how they are technically the same is futile at best. One can find some similarities but the further you go in looking at the details of their technical operation, the more technical differences you will find.

This Commission should focus instead on the "results" that are provided by the operation of these networks. Simply, at the end of the day, customers on the ILEC networks place and receive calls across the network. Likewise, customers on the ALEC networks place and receive calls across the network. And, when the ALEC and ILEC networks are interconnected, customers on the respective networks can place and receive calls across the interconnected networks. Specifically, when a call is originated by Customer A on the ILEC's network and the ILEC terminates that call to Customer B on its own network, the result is a completed call between Customer A and Customer B. Now, if Customer B, in this example, were to be on an ALEC's network, the call would actually be transported and terminated on the ALEC's network but the *result* is the same, a completed call between Customer A and Customer B.

A recognition that the technical differences between the ALEC and ILEC networks do not impair the ability of either network to return the same results is necessary to realize the policy objectives established by the FCC.

Issue 12: *Pursuant to the Act and FCC's rules and orders:*

A. Under what condition(s), if any, is an ALEC entitled to be compensated at the ILEC's tandem interconnection rate?

B. Under either a one-prong or two-prong test, what is "similar functionality?"

C. Under either a one-prong or two-prong test, what is "comparable geographic area?"

Q. Please briefly describe the position taken by the ILECs with regard to the appropriate standard for use in determining when the tandem rate should

be applied for reciprocal compensation.

A. Both BellSouth and Verizon advocate the use of their "two-prong" test in which the ALEC's switch must both serve a comparable geographic area and perform tandem functions. They both add that the tandem function test can only be met if the ALEC's switch is actually performing intermediate trunk to trunk switching. Sprint on the other hand appears to support the use of a "one-prong" test. Sprint's witness Mr. Hunsucker states that "There are two scenarios in which the FCC rules afford ALECs compensation at the ILEC tandem interconnection rate; 1) when the ALEC switch utilizes a tandem or 'equivalent facility' under FCC Rule 51.701(c), 2) when the ALEC switch serves a 'comparable geographic area' consistent with FCC Rule 51.711(a)(3)." [Direct, Testimony at page 7, ln 5-7]

Q. How does the "two-prong" test advocated by BellSouth and Verizon compare to the FCC's rules and what would be the practical effect of adopting the "two-prong" test?

A. While I am not an attorney, I believe the FCC rules and orders are very clear on this issue. If a carrier demonstrates that its network serves a geographic area comparable to an area the ILEC serves with its tandem / end office architecture the ALEC must be compensated at the tandem rate. No further demonstration of tandem functionality is required. FCC Rule 51.711(a)(3) succinctly states:

> Where the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC's tandem interconnection rate.

If a "two-prong" test is adopted in conjunction with the ILEC's strict technical definition of tandem functionality, not only will it be contrary to the plain reading of the rule, the practical impact will be to exclude ALEC networks from receiving compensation at the tandem level. It will not matter how broad the geographic region over which the ALEC provides transport and termination, compensation will only be available at the end office rate.

Under the ILEC's position, the cost to the ILEC for termination of a call anywhere on the ALEC's network will be only the ALEC's charge for end office termination, even if the ILEC would have utilized its own tandem (and incurred its own tandem costs) to transport and terminate the call had it remained on the ILEC's network. This approach inappropriately allows the ILEC to receive the "results" of tandem service at the end office rate, thereby avoiding its own tandem costs.

Q. How does this relate to your earlier discussion concerning focus on network "results" as opposed to the technical details?

A. As I stated earlier, any technical comparison of the ILEC and ALEC networks will reveal differences. Adopting the technical comparison standard advanced by the ILECs (i.e., tandem switching must involve intermediate trunk to trunk switching AND MUST be performed) would allow the ILECs to avoid compensating ALECs at the tandem level when the ALEC network, with its different technology and architecture, provides the same results as the ILEC tandem. The ILEC's proposed technical comparison standard, combined with the "2-prong" test, in addition to being incorrect as a matter of law, ignores the results achieved by the ALEC network.

If the analysis is not performed from a results orientation, then the

alternative, efficient technologies and architectures being deployed by ALECs will never qualify for tandem treatment, regardless of the results those networks are delivering. In fact, a focus on technical definitions at the expense of the results places ALECs in the position of having to replicate the ILEC's tandem / end office network in order to "qualify" for tandem level compensation. Such an incentive toward the construction of inefficient networks is clearly not in the public interest.

Q. Do you agree with the ILEC's interpretation of ¶ 1090 of the First Report and Order as it relates to the analysis of what is similar functionality?

A. No. There are two areas of disagreement. First, the FCC did not establish a "2-prong" test. The need for an ALEC to demonstrate the similarities of its network to that of the ILEC's tandem only arises when the ALEC's network does not serve a geographic area comparable to the area served by the ILEC's tandem switch. Second, if demonstration of the similarities between an ALEC's network and the ILEC's tandem switch is warranted, there is no requirement that the ALEC network must perform intermediate trunk to trunk switching in order to be considered similar to the ILEC tandem switch.

BellSouth recognizes that the FCC, in its Local Competition Order, directed state commissions to "consider whether new technologies (e.g., fiber ring or wireless network) performed functions similar to those performed by an incumbent LEC's tandem switch." (¶1090) BellSouth then argues that the proper consideration of the similarities of the "new technologies" to the ILEC tandem switch is to compare them to the FCC's definition of Local Tandem Switching Capability found at FCC Rule 51.319(c)(3). Of course this definition is intended to identify the tandem switch as an unbundled network element *in*

the ILEC's network. As discussed above, because of the differences in the ALEC and ILEC networks, the application of such a technical definition will result in the disqualification of an ALEC's network as performing similar tandem functions.

In fact, such a requirement begs the question as to why the FCC even bothered to direct the states to consider "new technologies." If the FCC had intended for the traditional technical definition of tandem switching, as found in the ILEC's networks, to be the litmus test, they simply could have skipped the consideration of "new technologies" because there are no new technologies that would meet this definition. Only the replication of the ILEC network would stand up to this traditional technical definition of tandem switching.

Q. At page 10 of his direct testimony Mr. Ruscilli cites the Florida Commission's decision in the Intermedia/BellSouth Arbitration as support for BellSouth's contention that the "2-prong" test is appropriate. Please comment.

A. While the Commission did identify the two criteria found in ¶ 1090, "similar functionality and comparable geographic areas," this identification cited by Mr. Ruscilli did not indicate that the Commission believed it was to engage in a "2-prong" analysis (i.e., that both criteria must be met in order for an ALEC's network to qualify for the tandem rate). In fact, while the Commission found that there was "no evidence that either of these switches functions as a local tandem," [page 13 of the order] the Commission continued in its review of the evidence presented by the Intermedia witness with regard to geographic criterion and found as follows:

We find the evidence of record insufficient to determine if the

second, geographic criterion is met. We are unable to reasonably determine if Intermedia is actually serving the areas they have designated as local calling areas. As such, we are unable to determine that Intermedia should be compensated at the tandem rate based on geographic coverage." [emphasis added] [page 14 of the order]

Had the Commission believed that Intermedia needed to met both criterion, as BellSouth contends, there would have been no need to review the geographic criterion as Intermedia had already failed the functionality criterion.

Q. Mr. Ruscilli cites other Commission Orders as supportive of BellSouth's position, do you agree?

A. No. Mr. Ruscilli refers to three other Commission arbitration orders: the Final Order on Arbitration concerning ICG and BellSouth , Order No. PSC-00-0128-FOF-TP, Docket No. 990691-TP (January 14, 2000) ("ICG/BellSouth Order"); the Final Order on Arbitration concerning Sprint and MCI, Order No. PSC-97-0294-FOF-TP, Docket No. 961230-TP (March 14, 1997) ("MCI/Sprint Order"); and the Order on Petition for Arbitration concerning MFS and Sprint, Order No. PSC-96-1532-FOF-TP, Docket No. 960838-TP (December 16, 1996) ("MFS/Sprint Order").

Q. Mr. Ruscilli, at page 10 of his testimony, points to the ICG/BellSouth order to support BellSouth's proposed two-pronged test. Do you agree?

A. No. Mr. Ruscilli misreads the Commission's decision. The Commission noted that ICG had no facilities in place and therefore concluded that the Commission could not determine if ICG's network would serve a geographic area comparable to one served by a BellSouth tandem switch. The Commission also considered

whether ICG's network would include tandem switches or provide a tandem functionality, and concluded that it would not. The Commission did not suggest that ICG had to prove both geographic comparability *and* tandem functionality. Rather, its discussion was consistent with the principle that an ALEC seeking to recover the tandem interconnection rate must prove geographic comparability *or* tandem functionality. In short, the ICG Order supports the conclusion that an ALEC showing only geographic comparability is entitled to the tandem interconnection rate.

Q. At pages 10 and 11 of his direct testimony, Mr. Ruscilli quotes the MCI-Sprint order for the proposition that an ALEC is not entitled to be compensated for transport and tandem functions that it does not actually perform. Please comment.

A. In the MCI/Sprint Order, the Commission stated that it would not rely on the stayed FCC rules and stayed portions of the Local Competition Order as a basis for its decision. The Commission's decision in the MCI/Sprint Order therefore does not apply here, because WorldCom, in this docket, is requesting the Commission to make its decision based on the *reinstated* FCC pricing rules that the Commission did not rely upon in its previous rulings.

Q. At page 11 of his testimony, Mr. Ruscilli cites the MFS-Sprint order to support BellSouth's position. Is that order germane here?

A. No. Like the MCI/Sprint Order, the MFS/Sprint Order was made when the FCC's pricing rules were stayed. In the MCI/Sprint Order, the Commission stated that "[w]hile we did discuss the merits of the FCC Rules and Order in our decision in the MFS/Sprint arbitration, they were not a basis for our decision." The Commission's ruling in the MFS/Sprint Order therefore has no bearing

here.

Q. Verizon witness, Dr. Beauvias, cites two court decisions as supportive of a requirement that the ALEC's network must meet the technical definition of tandem functions, under the "2-prong" test. Do these decisions provide the support alleged by Dr. Beauvias?

A. No. First, Dr. Beauvias' reliance on *MCI Telecommunications Corporation v. Illinois Bell Telephone Company* (Case No. 97 C 2225, June 22, 1999) to support its two-prong test is misplaced. The district court did not reach the issue of whether a two-pronged test is consistent with FCC Rule 51.711, the Local Competition Order, or the Act. In any event, the functionality point was essentially moot, because there was no dispute that MCI's switches provided functionality comparable to Ameritech's tandem switches.

Second, Verizon relies on Ninth Circuit decision in *US West Communications v. MFS Intelenet, Inc.*, 193 F.3d 1112 (9th Cir. 1999), which arose from a Washington arbitration. The Ninth Circuit simply held that the Washington Commission was not arbitrary or capricious when it ruled that MFS was entitled to the tandem interconnection rate, and in so ruling considered whether MFS's switch performed similar functions and served a geographic area comparable to U.S. West's tandem switch. The Ninth Circuit did not hold that an ALEC must prove both functional similarity and geographic comparability.

Two additional facts surrounding this decision (and the preceding decision by the Washington Utilities and Transportation Commission that gave rise to the court case) further support WorldCom's position that the ALEC switch does not need to perform intermediate trunk to trunk switching in order to qualify for compensation at the tandem rate. First, the MFS network utilized at

the time of this decision consisted of fiber transport facilities and a single local switch. Under the Verizon standard of tandem comparison, an ALEC network with a single switch could never meet the technical definition of tandem switching. Additionally, subsequent to the Ninth Circuit Decision, in an arbitration between Electric Lightwave, Inc. and GTE Northwest (Docket No. 980370), the arbitrator rejected an argument similar to the one being made by Verizon and BellSouth here. In his March 22, 1999 decision, the arbitrator stated that "[t]he functional similarity between a CLEC switch and an incumbent LEC's tandem switch is not relevant where the evidence supports a finding that they serve a geographically comparable area." A copy of the Electric Lightwave order is attached as Exhibit ___ (MEA-1). The quotation is from page 16 of the exhibit. This Electric Lightwave arbitration decision demonstrates, just as the Ninth Circuit determined, that Washington does not require proof of both tandem functionality and geographic comparability.

Q. Does that conclude your testimony?

A. Yes it does.

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition for Arbitration of an Interconnection Agreement Between	)	DOCKET NO. UT-980370
ELECTRIC LIGHTWAVE, INC., and GTE NORTHWEST INCORPORATED	)	ARBITRATOR' S REPORT AND DECISION
Pursuant to 47 USC Section 252.	)	

I. MEMORANDUM

A. Procedural History.

On May 1, 1998, Electric Lightwave, Inc. (ELI), requested to negotiate an interconnection agreement with GTE Northwest Incorporated (GTE). On October 7, 1998, ELI, timely filed a Petition for Arbitration with the Washington Utilities and Transportation Commission ("Commission")[1] pursuant to 47 USC § 252(b)(1) of the Telecommunications Act of 1996, Public Law No. 104-104, 101 Stat. 56, *codified at* 47 U.S.C. § 151 et seq. (1996) (Telecom Act). The matter was designated Docket No. UT-980370.

The Commission entered an Order on Arbitration Procedure and appointed an arbitrator on October 27, 1998. GTE filed its response with the Commission on November 2, 1998.[2]

On November 13, 1998, a prehearing conference was held to establish a procedural schedule. On November 25, 1998, the parties jointly requested that the statutory deadline for resolution of disputed issues be extended and they waived all rights to challenge a Commission decision dated on or before March 8, 1999, on the basis of timeliness. On December 1, 1998, the First Supplemental Order on Prehearing Conference approving the joint request was entered. Opening testimony was filed on December 1, 1998. Reply testimony was filed January 4, 1999.

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[1] In this decision, the Washington Utilities and Transportation Commission is referred to as the Commission. The Federal Communications Commission is referred to as the FCC.

[2] The ELI Petition, including its proposed interconnection agreement, and GTE's Response, although not separately marked as hearing exhibits, are deemed a part of the record and properly before the Arbitrator and the Commission.

On January 13, 1999, a second prehearing conference was held. At the conference the parties agreed to stipulate the prefiled testimony and exhibits into evidence, waive the scheduled hearing, and submit briefs on the unresolved issues. Opening briefs were filed on January 27, 1999. Reply briefs were filed on February 1, 1999.

On February 24, 1999, the parties jointly requested an additional extension of the statutory deadline to March 22, 1999, and for permission to file supplemental briefs. The requests were granted. Supplemental briefs were filed on March 8, 1999.

B. Presentation of Issues.

The parties presented three issues for resolution in this proceeding. GTE raised an additional issue in its Supplemental Brief. The issues are:

I. Should GTE and ELI Compensate Each Other under Their Agreement for the Costs of Transport and Termination for Traffic Exchanged Between Their Networks over Local Interconnection Facilities That Terminate to Internet Service Providers?

2. What Compensation Mechanism Should Be Applied for the Costs of Transport and Termination for Traffic Exchanged Between Networks over Local Interconnection Facilities That Terminate to ISPs?

3. Should GTE Compensate ELI for Traffic Exchanged Between Their Networks at the Tandem Switching Rate or at the End Office Switching Rate?

4. Should the Commission Shorten the Negotiated and Agreed to Term of the Agreement or Establish Procedures to Clarify or Modify Interim Rules for Inter-carrier Compensation?

C. Resolution of Disputes and Contract Language Issue.

On December 1, 1998, the First Supplemental Order on Prehearing Conference was entered and stated that "final offer" arbitration would not control dispute resolution. In preparing the arbitration report in this matter, the arbitrator was not required to choose between the parties' last proposals as to each unresolved issue. The arbitrator considered the parties' arguments and made decisions consistent with the requirements of state and federal law and the Commission on an issue-by-issue basis.

As a general matter, this decision is limited to the disputed issues presented for arbitration. 47 U.S.C. § 252(b)(4). Each decision of the arbitrator is subject to and qualified by the discussion of the issue. The arbitrator reserves the discretion to either adopt or disregard proposed contract language in making decisions. However, adoption of one party's position generally implies that the parties should use that party's contract language incorporating the advocated position in preparing a final agreement. Contract language adopted remains subject to Commission approval. 47 U.S.C. § 252(e).

This Arbitrator's Report and Decision is issued in compliance with the procedural requirements of the Telecom Act, and it resolves all issues which were submitted to the Commission for arbitration by the parties. At the conclusion of this Report and Decision, the Arbitrator addresses the approval procedure to be followed in furtherance of the issuance of a Commission order approving an interconnection agreement between the parties.

C. Generic Pricing Proceeding

On October 23, 1996, the Commission entered an order in other arbitration dockets declaring that a generic proceeding would be initiated in order to review costing and pricing issues for interconnection, unbundled network elements, transport and termination, and resale.[3] The Commission stated that rates adopted in the pending arbitrations would be interim rates, pending the completion of the generic proceeding. That proceeding is underway.[4] Accordingly, the price proposals made in this arbitration have been reviewed with the goal of determining which offers a more reasonable interim rate. The conclusions of the arbitrator with respect to price proposals and supporting information are made in this context and do not necessarily indicate Commission approval or rejection of cost and price proposals for purposes of the Generic Case.

D. The Eighth Circuit Order and the FCC Rules

On August 8, 1996, the FCC issued its First Report and Order (Local Interconnection Order), including Appendix B - Final Rules (FCC Rules).[5] On October 15, 1996, the U.

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[3] Order on Sprint's Petition to Intervene and to Establish Generic Pricing Proceeding (October 23, 1996) (Generic Pricing Order).

[4] *In the Matter of the Pricing Proceeding For Interconnection, Unbundled Elements, Transport and Termination, and Resale*, UT-960369 (general), UT-960370 (USWC), UT-960371(GTE); Order Instituting Investigations; Order of Consolidation; and Notice of Prehearing Conference, November 21, 1996 (Generic Case).

[5] *In the Matter of the Implementation of the Local Competition Rules of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order (August 8, 1996), Appendix B- Final Rules.

S. Court of Appeals, Eighth Circuit stayed operation of the FCC Rules relating to pricing and the "pick and choose" provisions.[6]

On July 18, 1997, the Eighth Circuit issued an order vacating several of the FCC Rules. On October 14, 1997, the Court entered an order on rehearing vacating additional FCC Rules. The Eighth Circuit decisions were thereafter appealed to the U. S. Supreme Court. On January 25, 1999, the Supreme Court issued a decision holding that the FCC Rules, with the exception of §51.319, are consistent with the Telecom Act.[7]

E. The FCC's Declaratory Order

On February 26, 1999, the Federal Communications Commission (FCC) entered its long awaited order on the issue of inter-carrier compensation for ISP-bound traffic (Declaratory Ruling).[8] The Declaratory Ruling was in response to a number of requests to clarify whether a local exchange carrier (LEC) is entitled to receive reciprocal compensation for traffic it delivers to an Internet service provider. Generally, competitive LECs (CLECs), such as ELI, contend that this is local traffic subject to the reciprocal compensation provisions of section 251(b)(5) of the Telecom Act. Incumbent LECs (ILECs), such as GTE, contend that this is interstate traffic beyond the scope of section 251(b)(5). The Declaratory Ruling concluded that ISP-bound traffic is jurisdictionally mixed and appears to be largely interstate, but further held that this conclusion does not in itself determine whether reciprocal compensation is due in any particular instance.

The FCC noted that it has no rule governing inter-carrier compensation for ISP-bound traffic, and found no reason to interfere with state commission findings as to whether reciprocal compensation provisions of interconnection agreements apply to ISP-bound traffic, pending adoption of a rule establishing an appropriate interstate compensation mechanism.[9] The FCC also reiterated that state commission authority over interconnection agreements pursuant to 252 of the Telecom Act extends to both interstate and intrastate matters, and the mere fact that ISP-bound traffic is considered

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[6] *Iowa Utilities Board et al. v. FCC*, No. 96-3321, Order Granting Stay Pending Judicial Review (8th Cir. Oct. 15, 1996).

[7] *AT&T Corp. v. Iowa Utilities Board*, 119 S. Ct. 721 (1999).

[8] In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Inter-Carrier Compensation for ISP-Bound Traffic , CC Docket Nos. 96-98 and 99-68, *Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68*, FCC 99-38 (February 26, 1999).

[9] Declaratory Ruling, ¶¶ 21-22.

largely interstate does not necessarily remove it from the section 251/252 negotiation and arbitration process.[10]

The FCC issued a Notice of Proposed Rulemaking simultaneous with the Declaratory Ruling for the purpose of adopting a rule regarding inter-carrier compensation for ISP-bound traffic. In the interim, the duty of state commissions to arbitrate interconnection disputes encompasses the resolution of disputed issues relating to ISP-bound traffic, consistent with governing federal law:

> . . . [N]othing in this Declaratory Ruling precludes state commissions from determining, pursuant to contractual principles or other legal or equitable considerations, that reciprocal compensation is an appropriate *interim inter-carrier compensation rule* [for ISP-bound traffic] pending completion of the rulemaking we initiate below. Declaratory Ruling, ¶ 27 (Emphasis added).
>
> * * * *
>
> Until adoption of a final rule, state commissions will continue to determine whether reciprocal compensation is due for [ISP-bound] traffic. Declaratory Ruling, ¶ 28.

The Commission must fulfill its statutory obligation under section 252 of the Telecom Act to resolve the disputes presented by ELI and GTE in this proceeding, and to decide whether an inter-carrier compensation mechanism should be established. As discussed in this report, the decision that reciprocal compensation is appropriate as inter-carrier compensation is an interim rule pending completion of the FCC's rulemaking and must vary to comply with subsequent federal rules.

F. The Internet

The Internet "is an international network of interconnected computers." *Reno. v. ACLU*, 117 S.Ct. 2329, 2334 (1997).

> [A]ccess to the Internet may take advantage of a wide variety of communication and information retrieval methods. These methods are constantly evolving and difficult to categorize precisely. But, as presently constituted, those most relevant . . . are electronic mail ("e-mail"), automatic mailing list services . . ., "newsgroups," "chat rooms," and the "World Wide Web." All of these methods can be used to transmit text; most can transmit sound, pictures, and moving video images. Taken together, these

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[10] Declaratory Ruling, ¶ 25, citing the *Local Interconnection Order*, 11 FCC Rcd at 15544.

> tools constitute a unique medium . . . located in no particular geographical location but available to anyone, anywhere in the world, with access to the Internet. *Id.*, 117 S.Ct. at 2335.

Essentially, the "Internet is a distributed packet-switched network, which means that information [being transported within the network] is split up into small chunks or 'packets' that are individually routed through the most efficient path to their destination." *Report to Congress*, In Re Federal-State Joint Board on Universal Service, FCC 98-67, at ¶ 64 (April 10, 1998). Generally, individuals contract with an Internet Service Provider (ISP) for a flat monthly fee to access the Internet. ISPs pay their own local exchange carrier for the telecommunications services that allow its customers to call it. If an ISP is located in the same "local" calling area as a customer, the customer may dial a seven-digit using the public switched telephone network to connect to the ISP facility. The ISP's modem then converts the analog messages from its customers into data "packets" that are switched through the Internet and its host computers and servers. Digital information is transmitted back to the ISP to be converted into analog form and delivered to the ISP's customer.

G. Standards for Arbitration

The Telecommunications Act states that in resolving by arbitration any open issues and imposing conditions upon the parties to the agreement, the state commission is to: (1) ensure that the resolution and conditions meet the requirements of Section 251, including the regulations prescribed by the FCC under Section 251; (2) establish rates for interconnection services, or network elements according to Section 252(d); and (3) provide a schedule for implementation of the terms and conditions by the parties to the agreement. 47 U.S.C. § 252(c).

II. RESOLUTION OF DISPUTED ISSUES

1. Should GTE and ELI Compensate Each Other under Their Agreement for the Costs of Transport and Termination for Traffic Exchanged Between Their Networks over Local Interconnection Facilities That Terminate to Internet Service Providers?

A. GTE's Position

GTE argues that the FCC's Declaratory Ruling requires that ISP-bound traffic should not be the subject of mutual compensation under the interconnection agreement in this proceeding. GTE states that it is incumbent upon the Arbitrator to resolve this

issue in the context of the largely negotiated interconnection agreement between the parties (Agreement).[11]

The Agreement provides that the parties shall reciprocally terminate local, intraLATA toll, optional EAS, and jointly provided Interexchange Carrier traffic originating on each other's networks. Agreement, Art. V, §3.1. The Agreement also provides that charges for the transport and termination of non-local traffic, including optional EAS, intraLATA toll, and interexchange traffic shall be in accordance with the parties' respective intrastate or interstate access tariffs or price lists. Agreement, Art. V, §3.2.1. According to GTE, there is no other provision in the Agreement for compensation of interstate traffic.

GTE argues that the FCC determined Internet traffic to be jurisdictionally interstate. Thus, ISP-bound traffic is non-local and not subject to reciprocal compensation obligations under the negotiated terms of the Agreement. Furthermore, GTE argues that prior Commission decisions upholding reciprocal compensation for ISP-bound traffic should not be accorded any weight as precedent.

B. ELI's Position

ELI states that the FCC found ISP-bound traffic to be jurisdictionally mixed and largely interstate. However (contrary to GTE's position), ELI argues that the Declaratory Ruling provides that reciprocal compensation for ISP-bound traffic is lawful, despite the fact that it is jurisdictionally mixed. ELI argues that the Commission previously concluded that traffic terminated to ISPs is subject to reciprocal compensation, and in the absence of a contrary federal rule, the Commission should not depart from that precedent.[12]

ELI also argues that reciprocal compensation presents the most equitable mechanism for inter-carrier compensation. Carriers are typically compensated for terminating interstate traffic through access charges and local traffic through reciprocal compensation. However, ISPs do not pay access charges as a result of the FCC's "Enhanced Service Provider (ESP) exemption". Nevertheless, ELI contends that carriers must be compensated for the termination of traffic. Accordingly, reciprocal compensation is the logical alternative for ISP-bound traffic.

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[11] *Petition of Electric Lightwave, Inc.*, Docket No. UT-980370, Exhibit B; Interconnection, Resale and Unbundling Agreement Between GTE Northwest Incorporated and Electric Lightwave, Inc.

[12] *Order Approving Negotiated and Arbitrated Interconnection Agreement*, In the Matter of the Petition for Arbitration of an Interconnection Agreement Between MFS Communications Company, Inc. (MFS), and U S WEST Communications, Inc., Docket No. UT-960323 (January 8, 1997) (MFS Arbitration).

C. Discussion

Previous arbitration decisions by the Commission favoring reciprocal compensation for ISP traffic were made with the foreknowledge that the issue would be addressed by the FCC at a later date. GTE's argument that those decisions should not be accorded any weight as precedent in light of the FCC's Declaratory Ruling has merit. However, GTE's argument that ELI is estopped from receiving reciprocal compensation for ISP-bound traffic by the terms of the negotiated Agreement and the FCC's Declaratory Ruling is rejected as too narrow an interpretation. The parties submitted the issue to be arbitrated as:

> Should GTE and ELI compensate each other under this Agreement for the costs of transport and termination for traffic exchanged between their networks over local interconnection facilities that terminate to Internet Service Providers ("ISPs")?[13]

GTE does not dispute that ISP-bound traffic is terminated over local interconnection facilities, and ISPs continue to be entitled to purchase their public switched telephone network links through local tariffs rather than interstate access tariffs.[14] The FCC found that ISP-bound traffic is jurisdictionally mixed and a substantial portion of dial-up ISP-bound traffic is interstate.

GTE argues that the negotiated provisions of the Agreement should be strictly construed and that ELI is implicitly estopped from receiving reciprocal compensation by the Declaratory Ruling. The Agreement provides that charges for the transport and termination of non-local traffic shall be in accordance with access tariffs or price lists. GTE maintains that the FCC's determination that ISP traffic is substantially interstate requires ELI to pursue compensation under the access tariffs, suggesting that the FCC exemption of ISPs from access charges is an unrelated issue.

ELI's statement of the disputed issue in its briefs differs from Exhibit 9:

> [Should the Commission] direct the parties to compensate each other under the reciprocal compensation mechanism contained in the interconnection agreement for the costs of termination of traffic to Internet Service Providers . . ..

GTE relies on the phrase "under the Agreement" to argue that the Commission is precluded from determining, pursuant to legal or equitable considerations, that

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[13] Exhibit 9.

[14] Declaratory Ruling, ¶ 20.

reciprocal compensation is an appropriate interim inter-carrier compensation rule for ISP-bound traffic. However, the FCC's Declaratory Ruling recognized that the non-local character of ISP-bound traffic is not determinative of the compensation issue. The parties submitted their agreed upon statement of disputed issues prior to the FCC's Declaratory Order and GTE unreasonably relies on form over substance.

Although opening arguments by the parties focus on whether ISP-bound traffic was local or interstate, the underlying issue is whether reciprocal compensation should be exchanged. GTE witness Steve Pitterle acknowledged that the primary issue is whether the FCC's Declaratory Ruling provides that the ISP reciprocal compensation issue remains under the jurisdiction of this Commission. Exh. 3, p. 7. The Declaratory Ruling unambiguously provides that state commissions retain jurisdiction to determine whether reciprocal compensation is an appropriate interim inter-carrier compensation rule. To the extent the negotiated terms of the Agreement conflict with federal law, FCC rules, or the Commission's duty to arbitrate interconnection disputes under the Telecom Act, they will be rejected when submitted for approval pursuant to section 252(e)(2)(A)(ii).

The Declaratory Ruling, ¶ 27, states:

> [N]othing in this Declaratory Ruling precludes state commissions from determining, pursuant to contractual or other legal or equitable considerations, that reciprocal compensation is an appropriate interim inter-carrier compensation rule pending completion of the rulemaking we initiate below.

Accordingly, resolution of this issue requires determination of whether such other legal or equitable considerations exist.

While the FCC's Declaratory Ruling specifically addresses issues raised by various parties regarding compensation for transport and termination of ISP-bound Internet traffic, the underlying functionality provided by ISPs is the interconnection of a circuit-switched network with a packet-switched network. These two networks are fundamentally different; circuit switching reserves network resources to route messages whereas packet switching utilizes network resources based upon availability. Historically, the jurisdictional separation between circuit-switched local and long distance traffic is determined by the state in which a call originates and terminates. That distinction also reflects the additional costs incurred in reserving network resources over long distance. The jurisdictional analysis is less straightforward for the packet-switched network environment of the Internet.[15]

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[15] Declaratory Ruling, ¶ 18.

The FCC local Interconnection Order, at ¶ 1033, states:

> Ultimately, we believe that the rates that local carriers impose for the transport and termination of local traffic and for the transport and termination of long distance traffic should converge. We conclude, however, as a legal matter, that transport and termination of local traffic are different services than access service for long distance telecommunications.

Packet-switched networking brings the underlying costs for the transport and termination of local and long distance traffic closer to its ultimate convergence. The FCC has recognized that enhanced service providers (ESPs), including ISPs, use interstate access services, but exempted ESPs from the payment of certain interstate access charges and treated ISP-bound traffic as though it were local since 1983.[16] Thus, ISP-bound traffic can be characterized as "local-interstate".

Local-interstate traffic also exists in cases where territory in multiple states is included in a single local service area, and a local call crosses state lines. Two examples of such local service areas are Pullman, WA - Moscow, ID, and Clarkston, WA - Lewiston, ID. Although the Declaratory Ruling concludes that ISP-bound local-interstate traffic does not terminate at the ISP's local server, it does not necessarily terminate at a local carrier's end-office switch in some other state either. However, a *cost* of "terminating the call" occurs at the end-user ISP's local server (where the traffic is routed onto a packet-switched network), and the applicable rate should be determined by the state where the terminating carrier's end office switch is located.[17] ISPs are end-users, not telecommunication carriers.

In the case of ISP-bound traffic, the terminating carrier incurring costs is the carrier that delivers traffic to the ISP. In the context of ISP-traffic, the "call" actually consists of acquiring "access" to a packet-switched network. While a packet-switched network may enable users to replicate a circuit-switched call, Internet access is an amorphous medium and should not be considered a "call" in the switched-circuit sense.

D. Decision

Inter-carrier compensation for local-interstate traffic should be governed by interconnection agreements negotiated and arbitrated under sections 251 and 252 of

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[16] Declaratory Ruling, ¶¶ 5 and 23.

[17] This outcome is consistent with the *Local Interconnection Order*, at ¶ 1038: "In cases in which territory in multiple states is included in a single local service area . . . we conclude that the applicable rate for any particular call should be that established by the state in which the call terminates."

the Telecom Act. A single set of negotiations regarding rates, terms, and conditions is more likely to lead to a process that is market-driven and efficient outcomes for all traffic exchanged by the parties. The Commission is not precluded from determining that reciprocal compensation is an appropriate interim inter-compensation rule for ISP-bound traffic by either the FCC's Declaratory Ruling or the Agreement.

The duty of local exchange carriers to establish reciprocal compensation arrangements for the transport and termination of telecommunications must be based upon compensating costs where they are incurred. LECs incur a cost when delivering traffic to an ISP that originates on another LEC's network and the terminating LEC does not directly receive any revenue from the customer who originates the call. Even though local-interstate traffic is not addressed by section 251(b)(5) of the Telecom Act, the FCC's policy of treating ISP-bound traffic as local for purposes of interstate access charges leads to the equitable conclusion that it also should be treated as local for purposes of reciprocal compensation charges. The only other alternative would be to apply interstate terminating access charges.

2. What Compensation Mechanism Should Be Applied for the Costs of Transport and Termination for Traffic Exchanged Between Networks over Local Interconnection Facilities That Terminate to ISPs?

A. GTE's Position

GTE argues that ISP-bound traffic should not be treated as if it were local and that no compensation for transport and termination is appropriate. GTE argues that minutes-of-use (MOU) based compensation is inappropriate for ISP-bound traffic, and bill and keep or flat-rate compensation are the only alternatives that should be considered.

GTE witness Dr. Edward Beauvais emphasizes that it is inefficient to allow flat-rated local service for end users and require local carriers to pay reciprocal compensation for exchanging traffic based upon MOU. The result would be prices for local usage set at a level below the incremental cost of providing the end-to-end call. Dr. Beauvais contends that end user charges and carrier compensation charges must complement each other, and a usage-based compensation approach should not be approved and adopted in this arbitration unless this Commission is willing to re-examine the associated issues of end user pricing on a measured basis. GTE argues that economic distortions caused by the FCC's exemption of ISPs from access charges would be exacerbated if ISP-bound traffic also is made subject to reciprocal compensation.

GTE also argues that MOU-based compensation could lead to substantial unwarranted "subsidies" between carriers because of the long hold times associated with ISP traffic, and has nothing to do with the true costs for providing that service.

GTE witness R. Kirk Lee contends that the expense of reciprocal compensation for traffic with longer average call duration has not been built into GTE's retail rate structure. GTE witness Steven Pitterle claims that GTE will be unable to recover its costs if it is required to compensate ELI for ISP-bound traffic on a usage basis.

GTE states that bill and keep is preferable to both MOU and flat-rated compensation methods as an interim mechanism. Bill and keep is a reasonable approximation of costs and a preferred outcome in Washington. Mr. Pitterle contends that bill and keep is an appropriate and equitable mechanism to maintain a consistent relationship between revenues received from flat-rated end users and potential compensation payments to ELI. A bill and keep mechanism would maintain the status quo between the parties until the FCC completes its rulemaking.

Alternatively, GTE proposes a flat-rated pricing system that more closely tracks the costs associated with ISP-bound traffic, and the revenues to be received to cover those costs. As explained by Mr. Lee, non-ISP local traffic would still be subject to the MOU compensation structure in the negotiated Agreement. GTE argues that the flat-rate per trunk charge calculated by Mr. Lee is a straightforward use of the costs developed by the Commission in the Generic Cost/Pricing Case.

B. ELI's Position

ELI proposes that the parties compensate each other for ISP-bound traffic under the MOU based reciprocal compensation mechanism contained in the Agreement. ELI argues that GTE's proposal for a different compensation mechanism for ISP-bound traffic should be rejected because GTE failed to provide any evidence that there is a cost difference between terminating traffic to ISP and non-ISP end users. ELI witness Timothy Peters contends that ELI incurs the same costs to terminate a call from a GTE customer regardless of whether that call is made to an ELI ISP customer or any other customer within the local calling area.

ELI argues that GTE's revenues are unrelated to the proper determination of an appropriate reciprocal compensation mechanism. The Telecom Act requires that prices be established based upon the cost of transporting and terminating traffic. Furthermore, ELI contends that GTE promotes pricing methodologies which the FCC determined to be inconsistent with section 252(d)(1) of the Telecom Act.

ELI opposes a bill and keep mechanism because traffic between GTE and ELI is not balanced, as the parties acknowledged by agreeing to MOU compensation for the transport and termination of local traffic. The only reason GTE is advocating a different mechanism for ISP-bound traffic is because that traffic is also imbalanced, but in favor of ELI.

ELI states that there is nothing inherently wrong with using a properly calculated flat-rated port charge for reciprocal compensation purposes; however, GTE proposes a flat-rate to be applied only to ISP-bound traffic, yet GTE does not demonstrate that the costs of terminating ISP traffic differs from other local traffic.

C. Discussion

The reciprocal compensation mechanism and rates to be established in this arbitration are interim in two respects: 1) they are interim pending the determination of permanent rates in the Commission's Generic Cost/Pricing Case; and 2) they are interim pending the FCC's NPRM. GTE's proposal for alternative reciprocal compensation mechanisms are all predicated on different mechanisms for ISP local-interstate traffic and non-ISP local traffic, even though there is no evidence in the record that the costs for transport and termination differ. GTE seeks to retain MOU-based compensation for local traffic that is potentially imbalanced in its favor, but seeks to minimize (or avoid) any expense for ISP-bound traffic which is potentially imbalanced in ELI's favor. Furthermore, the GTE proposal does not allow for offsetting imbalances in one type of traffic with the other.

While it may be economically efficient to implement measured rates for local service as discussed by Dr. Beauvais, the existing statutory scheme and long standing regulatory policy in the state of Washington favors flat-rate local service, and this arbitration is not a proper proceeding to implement that kind of change. Due to the prevailing flat-rate retail structure and the lack of substantive evidence of differing costs for the transport and termination of ISP local-interstate and non-ISP local traffic, it is inappropriate and inequitable to adopt separate reciprocal compensation mechanisms in this arbitration.

The Commission has previously identified both bill and keep and capacity-based charge mechanisms as preferred outcomes for local call termination compensation. Nevertheless, GTE and ELI negotiated a MOU-based reciprocal compensation mechanism for local traffic in the Agreement. Furthermore, GTE considers that negotiated Agreement provision to be outside of the scope of this arbitration. The Commission approves negotiated agreements pursuant to section 252(e)(2)(A) of the Telecom Act, and there are no grounds to reject the reciprocal compensation mechanism for local traffic in the Agreement.

As the market for telecommunication services changes, traditional assumptions underlying retail rate structures may require revision as well. If GTE's retail rates do not provide sufficient revenues to offset expenses because of a shift in its end user calling patterns, a reasonable response would be to request rate relief based upon new cost studies rather than shift the burden onto other interconnecting carriers. Another reasonable response would be to support capacity based charges for the

transport and termination of all traffic entitled to local treatment, not just the traffic that generates an undesirable imbalance under measured usage.

D. Decision

GTE's proposals that the Commission adopt separate reciprocal compensation mechanisms for the transport and termination of ISP-bound local-interstate and non-ISP local traffic are inappropriate and inequitable because there is no evidence that those traffic costs differ. Insofar as the parties have negotiated an MOU-based reciprocal compensation mechanism for local traffic in the Agreement and GTE considers that provision outside of the scope of this arbitration, it is unnecessary to further evaluate GTE's alternative proposals. The parties should apply the same MOU-based reciprocal compensation mechanism to ISP-bound local-interstate traffic that is used for non-ISP local traffic exchanged between their networks over local interconnection facilities.

3. Should GTE Compensate ELI for Traffic Exchanged Between Their Networks at the Tandem Switching Rate or at the End Office Switching Rate?

A. GTE's Position

GTE disputes ELI's claim that it serves a comparable geographic area to that served by GTE's tandem switch. GTE argues that the coverage of its tandem is substantially larger in GTE's service area than the area served by ELI's switch. GTE contends that the coverage must be equivalent or similar to the ILECs specific tandem at issue, and not a comparison between non-overlapping service areas.

GTE points to the pending installation of ELI's second switch and argues that ELI's claim that its network incurs more "transport" costs and less "switching" costs (thus, justifying the tandem rate) is negated. GTE argues that the second switch will bring switching closer to ELI's end user customers making GTE's end office switching rate more appropriate. By increasing switching, ELI proportionately reduces the transport for which the FCC designated the tandem rate as a proxy in the FCC Rules. 47 C.F.R. section 51.711(a)(3) states:

> Where the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC's tandem interconnection rate.

GTE also argues that ELI's fiber optic rings constitute long local loops, not transport.

GTE witness Howard Jones defines and contrasts the functionality of a tandem switch with an end office switch. A tandem switch performs two basic functions: 1) it collects traffic from incoming trunk groups according to common destination points and then switches that traffic to a single outgoing trunk group to the common destination; and 2) it performs only trunk to truck switching. An end office switch performs line to line, line to trunk, and trunk to line (but not trunk to trunk) switching. Mr. Jones characterizes the ELI switch as an end office switch because all ELI customers are connected to the line side of the ELI switch.

B. ELI's Position

ELI argues that the reason for a rule regarding comparable service areas is that the coverage area best represents a reasonable approximation of the carrier's cost of switching traffic. According to ELI the term comparable indicates that the size of the areas served by the respective carrier's switch must be similar and not necessarily overlapping. Mr. Peters describes ELI's network as a single switch that is connected to interlocking fiber optic rings. ELI covers a comparable area, but with a single switch and extensive transport, rather than multiple switches. ELI's switch effectively acts as both a tandem and end-office switch. Mr. Peters states that ELI's network configuration is more efficient for its operations, but it does not necessarily incur any less cost to terminate local traffic in its geographic service area than GTE incurs.

ELI states that the sole reason for the installation of a second switch is that ELI's current switch is out of capacity and proximity to end users has no relation to the pending installation. ELI contends that it will incur increased switching costs in order to serve the same geographic area and urges the Commission to reject GTE's position because it fails to recognize the overall symmetry between the parties' costs of transport and termination.

Finally, ELI argues that the Commission's decision in the MFS Arbitration adopted MFS's proposal that its fiber optic ring network was entitled to tandem treatment for its single switch, and rejected arguments made by U S WEST that are identical to those now forwarded by GTE.

C. Discussion

In the paragraph explaining the effect of 47 C.F.R. § 51.711(a)(3), the FCC made it clear that it was utilizing a tandem rate as "the approximate proxy for the interconnecting carrier's additional costs" where an interconnecting carrier's switch serves a comparable geographic area. *Local Interconnection Order,* ¶ 1090. Although GTE argues that the forward-looking economic costs should be similar for an incumbent LEC and an interconnecting carrier providing service in the same geographic area, it offers no economic rationale in opposition to ELI's argument that the objective is to reasonably approximate the symmetrical cost of switching traffic.

In the MFS case, U S WEST argued that the MFS network did not coincide with its extensive geographic service area. MFS argued that if it serviced customers in U S WEST's central and eastern Washington exchanges it would have to absorb the cost of construction, leasing, or purchasing unbundled network elements to provide facilities. Identical circumstances exist relating to GTE's rural central Washington exchanges.

There is substantial overlap between ELI's and GTE's service area and ELI's overall service area is comparable to GTE.[18] New entrants to the market will be unable to match the economies of scope and scale enjoyed by GTE, and the FCC's rules do not require that ELI serve the same area as GTE.

The functional similarity between a CLEC switch and an incumbent LEC's tandem switch is not relevant where the evidence supports a finding that they serve a geographically comparable area. Nevertheless, the record indicates that ELI's switch performs the function of aggregating and routing traffic along its interlocking fiber optic rings similar to a tandem switch. Network upgrades to increase switching capacity do not impact the analysis of functional similarity of switches in alternative network configurations.

D. Decision

GTE should compensate ELI at the tandem switching rate.

4. Should the Commission Shorten the Negotiated and Agreed to Term of the Agreement or Establish Procedures to Clarify or Modify Interim Rules for Inter-carrier Compensation?

A. GTE's Position

GTE acknowledges its obligation to enter into an interconnection agreement while the FCC rulemaking opened in the Declaratory Ruling is pending. GTE argues that the FCC limited state commission authority to devise inter-carrier compensation rules by providing that a Commission decision is interim pending completion of the rulemaking. GTE believes that an unfair result will occur if it is bound by the Commission's decision after its legal obligations are clarified or modified by the FCC, and seeks to lay the groundwork for review at this time.

GTE expresses its willingness to renegotiate inter-carrier compensation either upon the issuance of final rules in FCC Docket No. 99-68, or after one year.

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[18] Exhibit 8.

B. ELI's Position

ELI states that the parties negotiated and agreed to modify the rates, terms, and conditions of the interconnection agreement in order to conform with a change in law, including federal rules pertaining to the appropriate reciprocal compensation mechanism for ISP-bound traffic. Accordingly, ELI argues that GTE will not be deprived of future regulatory decisions as a result of any current, lawful decision of this Commission. If the FCC's rulemaking concludes with the adoption of a rule that conflicts with the interconnection agreement's compensation mechanism, those provisions are subject to change in accordance with federal rules pursuant to the terms of the Agreement.

C. Discussion

The Commission's authority to reject any portion of an interconnection agreement adopted by negotiation is governed by section 252(e)(2) of the Telecom Act. GTE and ELI have negotiated and agreed to an effective term of the Agreement (Article III, Section 2), and they did not request arbitration of the effective term as a disputed issue. The parties have also adopted by negotiation terms for resolving disputes arising during the effective term of the Agreement (Article III, Section 14), and for modification of the Agreement to comply with changes in law during the effective term (Article III, Sections 32 and 40). These portions of the Agreement do not discriminate against a third party telecommunications carrier, and implementation of these provisions is consistent with the public interest, convenience, and necessity. The terms of the Agreement sufficiently address GTE's concern that an unfair result may occur if subsequent FCC rules differ from the Commission's interim rules in this case.

D. Decision

The Commission should not shorten the negotiated and agreed to term of the Agreement or establish other procedures to clarify or modify interim rules for inter-carrier compensation.

III. IMPLEMENTATION SCHEDULE

Pursuant to 47 U.S.C. § 252(c)(3), the arbitrator is to "provide a schedule for implementation of the terms and conditions by the parties to the agreement." In this case the parties did not submit specific alternative implementation schedules. Specific contract provisions, however, may contain implementation time lines. The parties shall implement the agreement pursuant to the schedule provided for in the contract provisions, and in accordance with the 1996 Act, the applicable FCC rules, and the orders of this Commission.

In preparing a contract for submission to the Commission for approval, the parties may include an implementation schedule.

IV. CONCLUSION

The foregoing resolution of the disputed issues in this matter meets the requirements of 47 U.S.C. § 252(c). Insofar as the parties have largely negotiated an interconnection agreement, and few issues were submitted for arbitration, there is good cause to shorten the time for filing the Agreement with the Commission.

The parties are directed to submit an agreement consistent with the terms of this report to the Commission for approval within 14 days, pursuant to the following requirements of the Interpretive and Policy Statement, as modified:[19]

A. Filing and Service of Agreements for Approval

1. An interconnection agreement shall be submitted to the Commission for approval under Section 252(e) within 14 days after the issuance of the Arbitrators's Report, in the case of arbitrated agreements, or, in the case of negotiated agreements, within 30 days after the execution of the agreement. The 14 day deadline may be extended by the Commission for good cause. The Commission does not interpret the nine-month time line for arbitration under Section 252(b)(4)(C) as including the approval process.

2. Requests for approval shall be filed with the Secretary of the Commission in the manner provided for in WAC 480-09-120. In addition, the request for approval shall be served on all parties who have requested service (List available from the Commission Records Center. See Section II.A.2 of the Interpretive and Policy Statement) by delivery on the day of filing. The service rules of the Commission set forth in WAC 480-09-120 and 420 apply except as modified in this interpretive order or by the Commission or arbitrator. Unless filed jointly by all parties, the request for approval and any accompanying materials should be served on the other signatories by delivery on the day of filing.

3. A request for approval shall include the documentation set out in this paragraph. The materials can be filed jointly or separately by the parties to the agreement, but should all be filed by the 14-day deadline set out in paragraph 1 above.

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[19] *In the Matter of Implementation of Certain Provisions of the Telecommunications Act of 1996*, Docket No. UT-960269, Interpretive and Policy Statement Regarding Negotiation, Mediation, Arbitration, and Approval of Agreements Under the Telecommunications Act of 1996 (June 27, 1996) ("Interpretive and Policy Statement").

B. Negotiated Agreements

a. A "request for approval" in the form of a brief or memorandum summarizing the main provisions of the agreement, setting forth the party's position as to whether the agreement should be adopted or modified, including a statement as to why the agreement does not discriminate against non-party carriers, is consistent with the public interest, convenience, and necessity, and is consistent with applicable state law requirements, including Commission interconnection orders.

b. A complete copy of the signed agreement, including any attachments or appendices.

c. A proposed form of order containing findings and conclusions.

C. Arbitrated Agreements

a. A "request for approval" in the form of a brief or memorandum summarizing the main provisions of the agreement, setting forth the party's position as to whether the agreement should be adopted or modified; and containing a separate explanation of the manner in which the agreement meets each of the applicable specific requirements of Sections 251 and 252, including the FCC regulations thereunder, and applicable state requirements, including Commission interconnection orders. The "request for approval" brief may reference or incorporate previously filed briefs or memoranda. Copies should be attached to the extent necessary for the convenience of the Commission.

b. A complete copy of the signed agreement, including any attachments or appendices.

c. Complete and specific information to enable the Commission to make the determinations required by Section 252(d) regarding pricing standards, including but not limited to supporting information for (1) the cost basis for rates for interconnection and network elements and the profit component of the proposed rate; (2) transport and termination charges; and (3) wholesale prices.

d. A proposed form of order containing findings and conclusions.

D. Combination Agreements (Arbitrated/Negotiated)

a. Any agreement containing both arbitrated and negotiated provisions shall include the foregoing materials as appropriate, depending on whether a provision is negotiated or arbitrated. The memorandum should clearly identify which sections were negotiated and which arbitrated.

b. A proposed form of order is required, as above.

4. Any filing not containing the required materials will be rejected and must be refiled when complete. The statutory time lines will be deemed not to begin until a request has been properly filed.

E. Confidentiality

1. Requests for approval and accompanying documentation are subject to the Washington public disclosure law, including the availability of protective orders. The Commission interprets 47 U.S.C. § 252(h) to require that the entire agreement approved by the Commission must be made available for public inspection and copying. For this reason, the Commission will ordinarily expect that proposed agreements submitted with a request for approval will not be entitled to confidential treatment.

2. If a party or parties wishes protection for appendices or other materials accompanying a request for approval, the party shall obtain a resolution of the confidentiality issues, including a request for a protective order and the necessary signatures (Exhibits A or B to standard protective order) prior to filing the request for approval itself with the Commission.

F. Approval Procedure

1. The request will be assigned to Commission Staff for review and presentation of a recommendation at the Commission public meeting. The Commission does not interpret the approval process as an adjudicative proceeding under the Washington Administrative Procedure Act. Commission Staff who participated in the mediation process for the agreement will not be assigned to review the agreement.

2. Any person wishing to comment on the request for approval may do so by filing written comments with the Commission no later than 10 days after date of request for approval. Comments shall be served on all parties to the agreement under review. Parties to the agreement file written responses to comments within 7 days of service.

3. The request for approval will be considered at a public meeting of the Commission. Any person may appear at the public meeting to comment on the request for approval. The Commission may in its discretion set the matter for consideration at a special public meeting.

4. The Commission will enter an order, containing findings and conclusions, approving or rejecting the interconnection agreement within 30 days of request for approval in the case of arbitrated agreements, or within 90 days in the case

of negotiated agreements. Agreements containing both arbitrated and negotiated provisions will be treated as arbitrated agreements subject to the 30 day approval deadline specified in the Act.

G. Fees and Costs

1. Each party shall be responsible for bearing its own fees and costs. Each party shall pay any fees imposed by Commission rule or statute.

DATED at Olympia, Washington and effective this 22nd day of March 1999.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

LAWRENCE J. BERG
Arbitrator