As we discussed at some length above,[67] U S WEST no longer purchases IDE on behalf of ICs. Nor do we have a current tariff structure that contains nonrecurring charges associated with that equipment.

Thus, the assertions that U S WEST's since-superseded Transmittals were unreasonable (i.e., that the rate structure created "excessive market entry barriers" and "impede[d] the development of effective competition")[68] are moot.[69] Furthermore, most of those assertions have already been lodged and responded to.[70]

For the same reasons discussed above, U S WEST requests that the Bureau not address these matters with respect to U S WEST, since the issues are no longer ripe for consideration.[71]

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[67] See discussion above at 3-10.

[68] VEIC Tariff Investigation Order ¶ 61 (citing to assertions of MCI and Teleport).

[69] For example, the MCI claim that, upon termination of the VEIC service, the "equipment should be designated the property of the [IC]" (id.) is no longer a relevant matter of discussion. Under U S WEST's current tariff, in most circumstances upon termination of the VEIC arrangement, the IDE will be returned to the IC. U S WEST Tariff F.C.C. No. 5, Section 21.5.4.G. Furthermore, the Time Warner concern about the reusability of IDE upon termination of the VEIC service (VEIC Tariff Investigation Order ¶ 61) also is no longer relevant, as it makes sense only within the context of the earlier-filed Transmittals, not the currently-effective tariff.) See also note 23, supra.

[70] U S WEST VEIC Reply at 10-22.

[71] While the matter is no longer ripe with respect to the VEIC IDE offered under the since-superseded Transmittals, U S WEST is able to provide the information requested regarding DS1/DS3 service, because they are currently offered services involving active product management. From a theoretical perspective, in the case of both VEIC IDE and DS1/DS3 services, nonrecurring charges are designed to recover costs associated with the installation of the service; while recurring charges are designed to recover the costs of any equipment needed, as well as the ongoing maintenance of the service. Nonrecurring charges for the VEIC services (i.e., EICT DS3, DS1 and DS0) were developed in the same manner as for DS1, DS3 and DS0 services. The recovery of those charges differs, however, based on the product configurations, the market drivers and U S WEST's information and expectations. See note 31, supra.

2. Charges for Training[72]

The Bureau has noted that it previously determined that Individual Case Basis ("ICB") pricing for IDE training was inappropriate, on the grounds that such training was an integral part of IDE repair and maintenance, which should be recovered through an identifiable rate element.[73] In the current VEIC Tariff Investigation Order, the Bureau outlines certain IC arguments against various LEC tariff structures and rates with respect to recovery of training expenses.[74]

One of the ironies associated with these assertions is that ICs continue to press for "actual" recoveries *vis-à-vis* their own training needs, seemingly ignoring the nature of "averaged" common carrier rates. In essence, when it is to their advantage, ICs would prefer ICB pricing; when it is not, they would prefer averaging.[75]

In addressing the matter of training, the Bureau notes that a number of LECs charge training expenses to ICs based directly on ticket stubs and other

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[72] VEIC Tariff Investigation Order ¶¶ 64-70.

[73] Id. ¶ 64.

[74] Id. ¶¶ 66-67. The argument lodged by McLeod, i.e., that without a credit mechanism available to the second IC in the training queue, LECs would be "unjustly enriched," is addressed more fully below. While U S WEST has chosen, as a voluntary act, to provide such a credit, the facts surrounding the matter of training make clear that with or without such a credit nothing that could imaginably be categorized as "unjust enrichment" is occurring with respect to training expense recovery. Indeed, just the opposite is true.

[75] Compare MCI's argument that BellSouth should "charge [ICs] only for the airfare expenses that are actually incurred" and BellSouth's response that such would amount to ICB pricing. Id. ¶¶ 67 and 69.

receipts.[76] These LECs must comment on whether this direct "pass through" to ICs is reasonable and whether it is reasonable to permit ICs to pay third parties directly for airline and other training expenses.[77]

In responding to this matter of inquiry, it is probably best to begin by describing, generally, how U S WEST has configured our training charge and what it encompasses. Training on IDE is required only in those situations where U S WEST does not currently have technicians in a serving area[78] who are trained on the type of equipment being requested by the IC. In such a situation, U S WEST requires that a maximum of three people be trained per serving area.[79] In the event that those three trained technicians become unavailable in the future (due to relocation, retirement, job changes, etc.), U S WEST absorbs the costs of additional VEIC IDE training for those new technicians assuming job responsibilities in that

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[76] Id. ¶ 70(b).

[77] Id.

[78] A serving area is defined as the geographical area in which a technician normally services transmission equipment. This usually corresponds to a metropolitan service area. See U S WEST Tariff F.C.C. No. 5, Section 21.7.2.D.6.

[79] As the Bureau notes, U S WEST revised its VEIC tariff in December of 1994 to state the number of technicians that were to be trained. VEIC Tariff Investigation Order ¶ 71 (citing to U S WEST Tariff F.C.C. No. 5, Transmittal No. 571). One would think that this limitation would accommodate Cablevision's position that there be a "reasonable limit on the number of LEC personnel to be trained." Id. ¶ 72 and n.159. Apparently, however, Cablevision believes that three is too many. Id. and n.161.

Despite this limit on trained technicians, the Bureau should be aware that often U S WEST is required to pay for training based on a "minimum number" of attendees -- usually eight. Right now, U S WEST charges the IC only the actual training costs incurred by the presence of three attendees, with U S WEST absorbing the rest of the training costs.

serving area.[80] One would be hard pressed to argue that these training practices are "unreasonable."[81]

U S WEST charges ICs for training based on the actual training charges direct billed from a vendor to U S WEST. The total vendor-billed charges are then calculated in one-half-hour increments, pursuant to our tariffed VEIC training element, and quoted to the IC. For example, if the amount of direct-billed vendor charges totals $2400,[82] U S WEST takes our one-half-hour tariffed labor rate of $23.98 and divides the $2400 by that rate. The result, in the example, would be that the IC would be billed for 100 one-half hours to recover these vendor charges.[83]

Clearly, it is reasonable to pass these direct charges to the ICs. But for their desire to have non-standard termination equipment in U S WEST's central offices, there would be no training charge costs incurred by U S WEST. And, since the

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[80] U S WEST Tariff F.C.C. No. 5, Section 21.7.2(D)(6). At this time, then, we are accommodating Teleport's concern that "LECs should not be permitted to charge [ICs] for training after an initial pool of technicians has been trained." Id. and VEIC Tariff Investigation Order ¶ 72 and n.160.

[81] As is obvious from the discussion herein, U S WEST is currently absorbing considerable costs associated with VEIC IDE training. While we are agreeable to doing this at the initiation of VEIC service, while we determine exactly what kinds of training are necessary, the turnover of trained technicians, the type and scope of ongoing and future training requirements, we certainly cannot commit that -- as we receive more detailed information in this area -- we will not restructure our VEIC training element and increase our rates to better assure cost recovery in this area.

[82] This $2400 could be billed "in total" with no itemization of specifics, such as air transportation, source books and materials, etc. Or, it might be itemized according to various tasks or items, with the "grand total" being $2400. In the former case, one might argue that there is no "pass through," of the sort the Bureau is inquiring about in the VEIC Tariff Investigation Order ¶ 70(b); in the latter situation, there would be. But, in either event, U S WEST charges the IC the total direct-billed charge from the vendor.

[83] From the example, it should be apparent what U S WEST does not currently charge for: We do not charge for training expenses on a per diem basis (thus, we have no reason to respond further to id. ¶ 70(a)); nor do we charge an average rate to recover airline expenses associated with training (thus, U S WEST has no reason to respond further to id. ¶ 70(e)).

Bureau continues to press VEIC service as a "common carrier" service, it would be inappropriate for it to mandate how U S WEST "trains" its employees, or how it gets either its employees to the vendor's site for training or *vice versa*.

The Bureau inquires about the reasonableness of a rate structure that provides some kind of credit to the initial IC who paid for training on a piece of VEIC IDE, in those instances where a subsequent IC requests the same equipment or "if [a] LEC subsequently acquires the [IDE] for use in its own network.[84] While U S WEST does not believe that it is required, as a matter of general common carrier tariff law, that a LEC devise a tariff rate structure that spreads the costs of IDE training across multiple ICs (all of whom merely serendipitously make the same IDE choice), we have obviously chosen to provide some relief in this area.[85] We are not willing, however, to make the same accommodation in the event that we later decide to incorporate similar types of terminating equipment in our central office for use in providing common carrier services.

Especially given the dollar amount of training costs we are currently absorbing, the kind of "credit" mechanism the Bureau suggests in the event of subsequent LEC use of the VEIC terminating equipment in its network would be most inappropriate. But more importantly, to the extent that U S WEST is being compelled to provide this "VEIC common carrier offering" pursuant to a Commission-mandated product design, traditional notions of common carrier

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[84] Id. ¶ 70(c).

[85] Id. at n.153. U S WEST Tariff F.C.C. No. 5, Section 21.7.2.D.6.

network equipment procurement and deployment argue against any such "credit" mechanism.

Under the Commission's VEIC "formula," the LEC is the theoretical owner of the IDE, assuming the concomitant obligation to install the equipment and keep it maintained and in good repair.[86] These are obligations of the "common carrier" providing the VEIC service -- not the customer purchasing the service. Having performed its obligation, the common carrier should be in a position to "generalize" the benefit of that service across all of its public switched network customers -- not just the VEIC customer. That subsequent "generalization" is part and parcel of the common carriage model. The fact that a single customer requested the terminating equipment and bore the costs of training are immaterial from the larger common carrier and public interest perspective.

3. Clarification of Training Provisions[87]

The Bureau requires that LECs provide certain additional information regarding their tariffed provisions pertaining to training.[88]

As stated above,[89] U S WEST only requires that VEIC training be done in those circumstances where the IC is requesting non-U S WEST standard equipment

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[86] VEIC Tariff Investigation Order ¶ 64.

[87] Id. ¶¶ 71-74.

[88] Id. ¶ 74. Only SWBT is required to respond to subparagraph (d), and U S WEST is not herein responding to that subparagraph.

[89] See Section II.B.2, supra.

be placed in our central offices. When a VEIC order is received by U S WEST, we respond within five working days as to whether or not training will be required. If training is required, then it is clear that U S WEST does not deploy the requested terminating equipment in our network, within that particular serving area.[90] U S WEST does not have a specific tariff provision "describing types of equipment to which training charges do not apply because [we] use such equipment in our own networks."[91] U S WEST does, however, have an "approved product" list with respect to transmission equipment. That list is publicly available, upon request.

Again, as stated above,[92] the maximum number of technicians which U S WEST reasonably believes need to be trained for any particular serving area is three.[93] This number only provides training for an installer, a maintenance person and an operational support person. U S WEST absorbs the additional costs to train other technicians to ensure that there is back-up support for work, shift and vacation schedules.

U S WEST's IDE-trained technicians are required to be certified to U S WEST and vendor standards on the installation, maintenance and repair of the

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[90] And *vice versa*. If no training charges are quoted, it is an indication that we do deploy the equipment in our network in that serving area.

[91] VEIC Tariff Investigation Order ¶ 74(a). Furthermore, in advance of a request for IDE installation, we believe that making such a list available would violate our rights to hold such information proprietary. It might also skew purchasing behavior of ICs in a manner that might depress vigorous competition in the termination equipment manufacturing market.

[92] See Section II.B.3, supra.

[93] This information is provided in response to VEIC Tariff Investigation Order ¶ 74(b). See also U S WEST Tariff F.C.C. No. 5, Section 21.7.2.D.6.

IDE. And, as stated above,[94] in the event that the initially-trained technicians are no longer available, the costs associated with any future training or refresher courses on the IDE in a particular serving area are absorbed by U S WEST and are not recovered from the IC.

4. U S WEST's Rate Structure for Cabling[95]

In response to certain allegations by ICs that U S WEST's "rate structure for cabling is designed to obscure the actual cost of cabling in a [VEIC] arrangement," and that it "does not reflect costs underlying the cabling function, such as labor, racking, and other support systems generated by the cable,"[96] the Bureau requires that U S WEST provide certain information on our rate cabling structure. Specifically, the Bureau requires that we "explain in detail [our] cabling rate structure[ ]for [VEIC]."[97]

U S WEST's cable rate structure (the VEIC Entrance Facility rate element) includes a number of different components. The shared facility includes the building riser structure, the cable splicing and placement, fiber optic cabling and core drilling, and an outside utility vault. In addition, the cable rate element also includes the cost of a fiber distribution panel and attenuator.

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[94] See Section II.B.3 and note 79, supra.

[95] VEIC Tariff Investigation Order ¶¶ 75-77.

[96] Id. ¶ 75 (footnotes omitted).

[97] Id. ¶ 77.

By using a shared facility concept in developing the aggregate VEIC entrance facility rate element, U S WEST's intention was to pass on to the IC the economies of scale incorporated in such an approach. The aggregate cost was based on economies of scale for a 144-fiber cable and associated rate elements (e.g., riser, core drilling, etc.). U S WEST then apportioned the sum of these costs on a per-fiber basis, and multiplied it by two to derive a per-two-fiber cost. This allows the IC to order as few or as many fibers as it needs.

The above approach, which has the benefit of allowing purchasing decisions to be more specifically tailored to ICs' needs at any given time, eliminates the unknown variable of distance of the riser rate elements, which can vary substantially from wire center to wire center. As the distances increase for any of the assumptions, the more cost savings the IC would realize.

In developing the VEIC Entrance Facility rate element, the total costs for all the components (identified above) were allocated among three ICs. As a result of this fundamental costing assumption, if three ICs do not purchase VEIC Service (with the included entrance facility), U S WEST stands to lose dollars for the excess facilities not being used.

Furthermore, ICs can request dual entrances into a wire center. This causes a second VEIC entrance facility to be established within any single wire center. Since all ICs do not request dual entrances, additional costs are being absorbed by

U S WEST for these requests, as the basic assumption that three ICs would be present may not ever prove out.[98]

C. "Issue C: Are the terms and conditions in the virtual collocation tariffs unreasonable?"[99]

1. SWB's Obligation to Accept IDE[100]

U S WEST was not required to provide any information with respect to this matter of inquiry.

2. Use of Outside Contractors for Installation, Maintenance and Repair of IDE[101]

After reviewing various Orders, filed comments and responses on the matter of the use of outside contractors with respect to the LECs' installation, maintenance and repair of IDE, the Bureau requires that U S WEST -- a LEC that did not commit to allow the general use of outside contractors with respect to the installation, maintenance and repair of IDE -- (along with other LECs) provide additional information on the matter of the use of outside contractors.[102]

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[98] As a result of these phenomena, U S WEST continues to evaluate its VEIC entrance facility rate element to determine whether this particular rate structure appropriately recovers our identifiable (and assignable) costs.

[99] VEIC Tariff Investigation Order ¶ 78.

[100] Id. ¶¶ 79-81.

[101] Id. ¶¶ 82-88.

[102] Id. ¶ 88.

U S WEST has already responded in some detail to this matter of inquiry.[103] We have explained that, on occasion, we do use certified outside contractors for installation of our central office equipment (including termination equipment). Outside contractors are used when U S WEST's installation schedules cannot accommodate a particular project's timeframes and/or when our work force does not currently have the background for the required installation.

And, as we have previously stated,[104] these outside contractors are chosen from the U S WEST list of approved contractors. Each specific job (or need) is handled by means of a specific bid request. Those bids are then awarded on a competitive basis.[105]

U S WEST will not entertain a tariff provision that will permit ICs to circumvent our currently-established competitive bid process for use of outside contractors.[106] U S WEST will make the business and management decision as to

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[103] Id. ¶ 86. We believe that the Bureau has mischaracterized our earlier comments on this matter. The Bureau states that U S WEST "state[d] . . . that [we] [would] not entertain third-party '[IC]-designated vendor' bids for equipment installation." Id. (citing to U S WEST Original VEIC Tariff Reply at 42). Taken in context, what U S WEST said in our Reply was that we only occasionally use third-party contractors for network installation, maintenance and repair work; that we secure contractors for that work *via* a standard bid process from an approved contractor list; that an IC could seek to get one of its preferred vendors on such a list; but that being on the list would neither assure that outside contractor assistance would be necessary with respect to that IC's IDE installation, repair or maintenance or that the IC's preferred vendor would be the vendor chosen pursuant to our bid procedures, in the event a need for outside contractor assistance should arise. See U S WEST Original VEIC Tariff Reply at 40-44. We make the same statements herein. But that is a far cry from claiming that we "will not entertain third-party '[IC]-designated vendor' bids for equipment installation."

[104] Id. at 41.

[105] In those circumstances where equipment of some sort is necessary, a vendor is required to quote the equipment price separate and apart from the installation price.

[106] Thus, we will not "permit [ICs] to choose from a list of certified contractors available to install, maintain, or repair the [IDE]," (VEIC Tariff Investigation Order ¶ 88(b)) because we do not have

when the services of outside contractors are deemed necessary. When such contractors are considered needed, we will choose from our approved contractor list based on a project and time-specific bid request.

ICs can obtain a list of U S WEST approved and certified contractors from the U S WEST Business Resource Group ("U S WEST BRI").[107] If an IC has a particular contractor that it wishes to get added to that list, it can suggest to its contractor that it contact U S WEST to get placed on the list. However, the inclusion on the list will not assure that the IC's contractor will be "chosen" for any particular project at any particular time. In those limited circumstances where outside contract work is required, U S WEST will continue to award bid contracts on an equitable basis from among the approved contractor list.

3. Installation, Maintenance and Repair Intervals[108]

The Bureau reviews certain LEC tariff provisions with respect to the timeframes associated with VEIC IDE installation, maintenance and repair, and outlines certain of the objections to these provisions.[109] As a result of these objections, LECs are required to provide certain additional information about time

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such an approach to outside contractor assistance. Such assistance is totally based on any specific U S WEST need for assistance at any specific point in time.

[107] This is responsive to the Bureau's inquiry in the VEIC Tariff Investigation Order ¶ 88 (b) and (c).

[108] Id. ¶¶ 89-91.

[109] Id. ¶¶ 89-90.

intervals associated with the installation, maintenance and repair of VEIC IDE.[110] Herein, U S WEST responds:

Once the VEIC IDE is receipted by U S WEST, U S WEST follows the same guidelines and installation time intervals for that equipment, if it is equivalent to U S WEST's standard transmission equipment.[111] Once the equipment is installed and in service, U S WEST provisions the VEIC DS1/DS3 EICTs pursuant to the same standard provisioning intervals as for our DS1/DS3 standard services.

For installation of non-standard equipment, U S WEST may require longer installation intervals, depending upon the type of equipment designated by the IC and U S WEST's experience with installing the non-standard equipment (including training requirements and mastery). Due to the various types of equipment that can be designated by an IC, it would be difficult to state in a tariff specific time intervals.

LECs should not be required to provide specific information in their tariffs with respect to repair and maintenance intervals. Such a requirement would be unduly burdensome to LECs providing interconnection, because the information would be dependent on the types and expected performance levels of all IDE potentially requested by ICs. This information would need to be IDE-specific and would differ based upon the type of IDE chosen by each IC and each IC's particular

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[110] Id. ¶ 91.

[111] Meaning that U S WEST itself employs similar equipment in our central offices.

demands.[112] For example, U S WEST will perform maintenance or repair of IDE only when directed by the IC to do so. Thus, the "frequency" and "intervals" are totally dependent on either the performance characteristics of the IDE, the IC's requests, or both.

Nor should LECs be required to state the "maximum response time to intermittent service outages"[113] in their tariffs. The "maximum" response time will depend on initial trouble isolation to the VEIC IDE. In the former case, the LEC will have limited control of the response time, as the IC is responsible for performing surveillance on the IDE and reporting it to U S WEST. U S WEST's response time is largely dependent upon when the trouble call is received from the IC, when spares are received[114] and other variables (such as the immediate availability of a trained technician, weather conditions, etc.).

As it currently stands, ICs have the benefit, at least in U S WEST's tariff, of after-the-fact credit allowances for service interruptions, just like many of our other customers.[115] For the time being, and given the limited information we have available to us, this is sufficient.

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[112] Over time, it might be possible to derive an "average" repair and maintenance interval, depending on what is actually learned about the performance levels of particular kinds of equipment. For some IDE, there may be one "average;" for others (those that have lots of problems, for example), a different "average." But, right now, there is insufficient information on which to base an educated decision on what would be the appropriate "average" for sound cost recovery.

[113] VEIC Tariff Investigation Order ¶ 91(b)(2).

[114] Under our current tariff, U S WEST permits the spare equipment to be kept on the IC's premises. While we would expect a swift response to any call for spares, we certainly cannot (and will not) guarantee the behavior of a third party with respect to our service commitments.

[115] U S WEST Tariff F.C.C. No. 5, Section 2.4.4.B.12, has a specific provision to include VEIC service.

The Bureau also asks for a comparison between the "service options" that LECs have with regard to other "service customers" and those available to VEIC service customers, asking for citations to specific tariff references.[116] It is not clear to us what the Bureau means by the term "service options."

With respect to repair and maintenance service options, U S WEST offers the same range of service options to VEIC customers as we do to customers purchasing high capacity services, except that U S WEST does not offer service guarantees for VEIC service. Service guarantees are commitments that can only be made based on a clear understanding of equipment performance levels, including control over those performance levels. U S WEST may not have such information with respect to non-standard IDE equipment. And, until we do, no such guarantees will be forthcoming.[117]

Finally with respect to restoration services,[118] in the event that one of U S WEST's wire centers becomes inoperative, restoration priorities are based upon National Security Emergency Preparedness ("NSEP") Guidelines. Services not covered under NSEP Guidelines are handled on a "first call received is the first call restored" practice. U S WEST will handle restoration calls from ICs in the same manner as we handle calls to repair DS1/DS3 services.

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[116] VEIC Tariff Investigation Order ¶ 91(c).

[117] U S WEST Tariff F.C.C. No. 5, Section 21.5.1.M.

[118] VEIC Tariff Investigation Order ¶ 91(b)(3).

4. U S WEST's Insurance Requirement[119]

The Bureau views the matter of U S WEST's insurance requirement as a component of our VEIC service offering.[120] Apparently, on the basis of IC objections to such a provision, the Bureau requires U S WEST to provide additional information about the requirement.[121] We do so below.

Because there might be some confusion with regard to the insured status that U S WEST requires with respect to IC insurance policies, we begin with a clarification.[122] U S WEST has not requested "Named Insured" status on the IC's or their subcontractor's general liability policies. Such a status would require that ICs secure direct coverage to U S WEST for our business operations.

Rather, U S WEST is requiring "Additional Insured" status on such policies. This status provides U S WEST with an immediate defense by the ICs' (or their subcontractors') insurers for threatened vicarious liability that could be urged against U S WEST, arising from the ICs' or their subcontractors' actions. It is not the intent of U S WEST's insurance provision to require ICs or their subcontractors to insure U S WEST against the negligence of U S WEST employees, nor does our requirement that we be identified as an "Additional Insured" direct such a result. It

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[119] Id. ¶¶ 92-96.

[120] Id. ¶ 93.

[121] Id. ¶ 96.

[122] The Bureau remarks that U S WEST "must explain why it is reasonable to require [ICs] and their subcontractors to name US West [sic] as an insured party on their general liability policies." Id. ¶ 96(a). As explained immediately below, this "naming" can have two different aspects.

is U S WEST's intent to ensure that the ICs and their subcontractors have insurance to respond to bodily injury and property damage claims of U S WEST or third parties which occur or arise out of the IC's (or their subcontractor's) interconnection activities.

It is reasonable for U S WEST to be provided with vicarious liability defense under the ICs' and their subcontractors' general liability insurance policies. But for the presence of the ICs and their subcontractors in U S WEST's manholes, U S WEST would be exposed to no risk. This identifiable risk, as well as the identification of the risk-causer, makes insuring against the risk only a prudent business requirement.

With respect to the definition of terms that the Bureau inquires about,[123] the term "occurring or arising out of interconnection" means to take place, come about, come into being, or originate directly or indirectly from interconnection. The term "contractual liability" means liability assumed under any contract or agreement over and above that liability which may be imposed by law.

"Stop-gap liability" coverage protects employers (ICs and their subcontractors) in the states of Nevada, North Dakota, Ohio, West Virginia, Washington, and Wyoming, from common law actions brought by injured employees who reject workers' compensation benefits as the sole remedy for their injury. Coverage for common law actions outside of these six states is provided by employers' liability. Both Stop-gap and employers' liability coverages are provided

[123] Id. ¶ 96(b).

as part of a workers' compensation insurance policy. Stop-gap coverage would provide a defense to U S WEST for a common law action brought by an IC employee against U S WEST for injuries alleged to have occurred while working on our premises.

The term "premises-operations" refers to liability arising out of an accident occurring on the premises of the insured or as the result of its business operations on its premises. As a practical matter, U S WEST does not care whether an IC or its subcontractor provides coverage to U S WEST for this kind of liability, since the coverage runs only to the direct-insured premises and not U S WEST's. (Thus, our "Additional Insured" status for this kind of coverage is immaterial to us.) However, we know of no general liability policy that does not contain such coverage. Thus, our status as an "Additional Insured" would automatically afford us this coverage.

The term "completed operations" refers to liability insurance which provides coverage for bodily injury and property damage arising out of the operations away from the premises owned or rented by the insured which have been completed or abandoned.[124] This coverage is necessary because, with VEIC service, the IC will be on premises owned by U S WEST. If, for example, an IC was on U S WEST's premises (manhole) during the establishment of VEIC service and failed to cover the opening or left behind a screwdriver, and that act caused either property or

[124] Operations are deemed completed at the earliest of the following times: 1) When all operations to be performed by or on behalf of the insured under the contract have been completed. 2) When all operations to be performed by or on behalf of the insured at the site of the operations have been completed. 3) When the portion of the work out of which the injury or damage arises has been put to its intended use by other than the contractor or subcontractor.

bodily damage to either a U S WEST employee or a third party, the IC's "completed operations" coverage would respond.

Attached to this filing, in Appendix C, is the insurance section from U S WEST's Outside Plant Construction/Maintenance Agreement.[125] Nothing in this Agreement is optional. Depending on the type of work being performed, U S WEST sometimes requires additional types of coverage (such as that pertaining to exposures related to underground explosions and collapse hazards, as well as hazards associated with working in railroad rights-of-ways). The minimum liability limits of coverage are $1 million. And, typically, more is required.

5. Liability of LECs[126]

The Bureau asks a number of questions regarding the LECs' limitations of liability with respect to VEIC service.[127] In what can only be described as a mastery of understatement, the Bureau synopsizes U S WEST's already-filed position on this matter in the course of its narrative.[128]

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[125] Similar liability provisions are found in U S WEST's Standard Agreement for Services, an Agreement that is used by our procurement subsidiary with respect to contracting for all types of services, including building services, fleet services, leased-worker services, etc.

[126] VEIC Tariff Investigation Order ¶¶ 97-100.

[127] Id. ¶ 100.

[128] U S WEST's Original VEIC Tariff Reply provided the Bureau considerable argument (albeit through Attachments incorporated by reference) on the limitation of liability matter. (These Attachments included D1 (U S WEST Direct Case, CC Docket No. 93-162, filed Aug. 20, 1993, at 129-36 ("Physical Collocation Direct Case"); D2 ("Reply of U S WEST Communications, Inc., to Petitions to Reject, Suspend and/or Investigate," Transmittal No. 331, filed Apr. 5, 1993 ("Physical Collocation 1993 Reply") and D3 ("U S WEST Communications, Inc., Rebuttal," CC Docket No. 93-162, Transmittal Nos. 331, 338, 362, 368, and 383, filed Sep. 30, 1993 ("Physical Collocation Rebuttal")).

In this area, perhaps more than in any other, one is dismayed by the Bureau's shot-gun approach to the issues remaining regarding the LECs' VEIC offerings. There was absolutely no reason for the Bureau to drag out the issues associated with LEC limitations of liability, or ask them to "explain the policies articulated in their tariffs concerning an [IC's] right of action against [a] LEC for negligence, gross negligence, willful misconduct, or intentional harm."[129] The policies associated with such limitations of liability have been articulated for decades, both by courts and by the Commission.[130] They are policies that impact and affect virtually every LEC customer.[131]

The Physical Collocation Direct Case was also included as an attachment to our U S WEST Reply to Transmittal No. 614, at 7-8 (no-cost lease option transmittal).

Despite this substantial narrative and analysis, the Bureau characterizes U S WEST's position on this matter in two sentences: U S WEST "responds that its limitations of liability are neither unlawful nor discriminatory. In response to MCI's request for reciprocity, [U S WEST] asserts that as the provider of virtual collocation service, it is entitled to set its own terms and conditions." VEIC Tariff Investigation Order ¶ 99 (citation omitted).

[129] Id. ¶ 100(a). Only BellSouth was required to respond to requests for information with respect to subparagraphs (b) and (c).

[130] See, e.g., In the Matter of Local Exchange Carrier Line Information Database, Order, 8 FCC Rcd. 7130, 7134-35 ¶ 27, n.65 (1993) ("LIDB Order") citing to Western Union Telegraph Company v. Esteve Brothers & Co., 256 U.S. 566, 571 (1921); Primrose v. Western Union Telegraph Co., 154 U.S. 1 (1894); Robert Gibb & Sons, Inc. v. Western Union Telegraph Co., 428 F. Supp. 140 (D.N.D. 1977); In the Matter of Policies and Rules Concerning Toll Fraud, Notice of Proposed Rulemaking, 8 FCC Rcd. 8618, 8639-40 ¶ 39, n.61 (1993) (citing to the court cases mentioned above); In the Matter of Annual 1985 Access Tariff Filings, Memorandum Opinion and Order, 2 FCC Rcd. 1416, 1423 ¶ 68 and nn.50-51 (1987) (commenting on a carrier limitation of liability and noting that such limitations have often been sustained by courts and noting that it had previously denied a petition to investigate and suspend such a tariff provision). See also In the Matter of American Telephone and Telegraph Company Proposed Revisions of Tariff F.C.C. No. 260, Tariff F.C.C. No. 267, Tariff F.C.C. No. 259, and Tariff F.C.C. No. 263, Memorandum Opinion and Order, 76 FCC 2d 195, 198 ¶ 9 (1980); In the Matter of The Associated Press Request for Declaratory Ruling, Memorandum Opinion and Order, 72 FCC 2d 760, 763 ¶ 7 (1979).

[131] LIDB Order, 8 FCC Rcd. 7134-35 ¶ 27 ("clauses limiting a carrier's financial liability to the cost of service are found in virtually all common carrier tariffs").

The policies are certainly no secret, and, based on prior Commission precedent, it can be persuasively argued that a LEC has a right to include such provisions in its tariffs.[132] Limitations of liability in common carrier tariffs (limitations generally restricting the assumption of liability to those instances where a carrier is grossly negligent or has engaged in willful misconduct)[133] and liquidating damages for non-intentional acts to cost of service credits are reasonable because they work to depress the increase in rates that would be associated with liability incurred at a lower level. If U S WEST is rendered liable to an IC (or any other customer) for mistakes or negligence, the cost/price of that product (or products) will increase accordingly (to reflect the greater risk).

Given the existing Commission precedent in this area, such carrier limitations of liability are *a priori* reasonable. It is not the LECs, but opponents of such limitations, that should be required to prove them unreasonable. And, so far, those opponents have failed to do so.

Finally, as we indicated in our Original VEIC Tariff Reply,[134] a LEC's tariff is not the place to establish "reciprocity" provisions regarding liability, unless a LEC

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[132] In the Matter of the American Telephone and Telegraph Company; Revisions to Tariff F.C.C. Nos. 260 and 267, Maintenance of Service Charge Associated with Private Line Service and Dataphone Digital Service, Transmittal No. 13512, Memorandum Opinion and Order, 82 FCC 2d 370, 371-72 ¶ 3, n.4 ("AT&T Private Line Order") (addressing a liquidated damages/cost of service liability premium). ("In any case, a common carrier has the right to reasonably limit liability and the reasonableness of the liability limitation rests in striking a balance between the rights of aggrieved customers and the public interest in the provision of telephone service at the lowest possible cost."; citing to Associated Press, 55 FCC 2d 220, 222 (1975).)

[133] As should be clear by now, U S WEST's VEIC tariff provides no liability on our behalf in the absence of gross negligence or willful misconduct. U S WEST Tariff F.C.C. No. 5, Section 2.1.3.C.4.

[134] U S WEST Original VEIC Tariff Reply at 52.

(for some unknown business reason) saw the inclusion of such a provision as warranted. A LEC's limitation of liability speaks to the liability of the carrier to a customer, not the reverse.[135]

There is nothing so special about VEIC service, apart from our other common carriage offerings, that would warrant declaring (as a matter of policy, because clearly such provisions are lawful) such limitations of liability unreasonable. The fact that a LEC has physical possession of the IDE is simply an attribute of the common carriage offering as designed by the Commission.[136] There is nothing so unique about this arrangement that an IC should be awarded (*via* regulatory mandate) a more generous limitation of liability than any and every other U S WEST customer.[137]

6. Ordering and Billing VEIC Services[138]

The Bureau notes that "[m]ost of the LECs permit parties other than [ICs] . . . to be the 'customer of record' for purposes of ordering and billing [VEIC]

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[135] Compare AT&T Private Line Order, 82 FCC 2d at 371-72 ¶ 3 (in discussing a type of liquidated damages clause, the Commission stated, "AT&T's liability limitation is not a service charge but an assessment against AT&T to compensate a customer for expenses incurred as a result of non-intentional torts or service failures by AT&T. Furthermore, this assessment does not purport to reflect the full or even a substantial part of a customer's potential consequential losses or additional expenses.").

[136] Compare U S WEST Transmittal 614 Reply at 8.

[137] Should the Bureau deem that ICs are entitled to greater protection, the additional "cost" associated with the greater assumption of liability should be recovered directly from the IC's service offerings, and no others.

[138] VEIC Tariff Investigation Order ¶¶ 101-102.

services.[139] Those LECs that do not make such an accommodation in their current tariff are required to provide certain information.[140]

U S WEST's current tariff does not permit the "bundled" VEIC service to be broken out into different components for billing purposes. While we will permit Letters of Agency ("LOA")[141] to be used with respect to ordering service, our current practice is to bill the entire bundled service to the IC, as the customer of record.

At the time U S WEST drafted this tariff provision, it was unclear to us precisely what kind of service "splitting" or "element separation" ICs (or others) might seek to secure. Some that we could envision were unacceptable to us, and would have required major changes to our existing ordering and billing processes.

Since we originally filed our VEIC tariff, however, it has become clearer to us precisely what is being asked for with respect to ordering and billing of VEIC service. We in fact would be willing to amend our VEIC tariff to allow customers other than ICs to order and be billed for the VEIC cross connection.[142] An LOA will

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[139] Id. ¶ 101.

[140] Id. ¶ 102. U S WEST is not cited as one of the LECs that does not permit such an arrangement. However, our current tariff does not make such an accommodation. Thus, we herein reply to the Bureau's inquiry.

[141] U S WEST accepts LOAs, in appropriate circumstances, within the context of service ordering. An ordering party is required to provide us with an LOA when ordering any service for which it is not the current customer of record. Specific procedures for accepting LOAs are not referenced in either U S WEST's special access or switched access tariffs. (See VEIC Tariff Investigation Order id., where the Bureau requests a citation to the applicable sections of such tariffs.) Rather, they are accepted as a matter of agency law, pursuant to appropriate internal practices and procedures.

[142] See U S WEST Transmittal No. 641, filed Aug. 9, 1995. See also U S WEST Tariff F.C.C. No. 5, Section 2.3.14.B.

have to be executed, whereby the IC agrees to this arrangement and where the IC specifies what services are to be billed to what customers.[143]

III. CONCLUSION

For the above-stated reasons, U S WEST's VEIC Tariff provisions, being reasonable in both their costs and rates, and representing prudent exercises of management prerogative, should be sustained and allowed to remain in effect.

Respectfully submitted,

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[143] Note that U S WEST's willingness to pursue this arrangement does not extend to the billing of the multiplexer separate from the EICT. See U S WEST Transmittal No. 641 allowing customers to buy multiplexing optional features out of Section 6 or 7 of our Tariff F.C.C. No. 5. See U S WEST Tariff F.C.C. No. 5, Section 7.1.2.D.

APPENDIX A