Commission in its Partial Suspension Order in CC Docket No. 94-97, released December 9, 1994.[22]

Not all of U S WEST's VEIC rate elements addressed in the Partial Suspension Order were prescribed with a 1.2 overhead loading factor. Indeed, certain IDE rate elements carried an overhead factor of 1.3.[23]

U S WEST believes a 1.3 overhead factor is appropriate with respect to our most recent VEIC filing. Its use does not demonstrate the inclusion of inappropriate elements.[24] And, its use certainly does not produce an "unlawful" tariff. Thus, our tariff should clearly not be rejected on this ground. And, while the Bureau may disagree, we do not believe the use of such factor warrants a suspension either.

To the extent that ELI's objections are made with respect to this Transmittal merely to "preserve" its long-standing arguments against U S WEST's costing and

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[22] Id. at 2-4; MFS at 5-6.

[23] For instance, the DS1 Entrance Facility and DS1 Switched Transport Entrance Facility had prescribed factors of 1.4; Circuit Packs, Interface Cards and Ports, all of which were IDE, carried factors of 1.3.

[24] Both MFS and ELI take exception to the fact that U S WEST indicated that our pricing takes into consideration "factors such as 'the competitive alternatives available to the customer, market willingness to pay, and any information on the value of the service to the customer.'" ELI at 4. See also MFS at 4. Neither, of course, can demonstrate what the outcome of such consideration was -- whether it raised, lowered, or rendered neutral the rates. U S WEST can attest to the fact that identification of the items identified by ELI and MFS is standard, even routine, in many of U S WEST's descriptions of ratemaking and price setting; the factors challenged by ELI and MFS were not inappropriately used in the manner suggested. There is nothing about a 1.3 overhead loading factor that would suggest otherwise.

pricing decisions,[25] U S WEST sees nothing to be served by a lengthy response. We, too, have been down this road before.

We append to this filing (as Attachment B) and incorporate by this reference our Rebuttal filing in CC Docket No. 94-97, dated April 11, 1995.[26] Therein we address the claims of ELI -- and others -- that U S WEST must consider DS1/DS3 services as "comparable" to VEIC services; and that, once having done so, a 1.07 overhead loading factor would be required. As that Rebuttal filing makes clear, both assertions are incorrect.

U S WEST is under no obligation to philosophically agree with the position that DS1/DS3 services are "like" VEIC service. However, were we of the opinion that they were, our recent filing makes clear that an overhead loading materially in excess of 1.07 would be appropriate.

2. Long Run Versus Short Run Incremental Cost

MFS claims that U S WEST uses long-run incremental cost ("LRIC") with respect to our VEIC services, while we use short-run incremental cost with respect to our high capacity services.[27] U S WEST is not clear how MFS arrived at its conclusions.

MFS does not define what it means by "short run incremental cost[]," in the context it references. Second, the document which it cites to support its allegation

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[25] ELI at 2-3.

[26] See Rebuttal to Oppositions to U S WEST Direct Case, CC Docket No. 94-97, Phase I, filed Apr. 11, 1995.

[27] MFS at 4.

does just the opposite. It makes no reference to "short run incremental cost." U S WEST's Transmittal No. 222 (which involved the setting of rates for DS3 channel termination rate elements), Description and Justification at 2-1 contains the statement that the unit costs "were developed using an incremental or 'bottoms-up' cost methodology . . . on a forward looking basis" -- which is LRIC. Thus, MFS has failed to demonstrate that U S WEST used "different" methodologies with respect to our high capacity and VEIC services.

3. Second Highest Rates for VEIC IDE Elements

MFS, in particular, complains about the fact that "U S West [sic] still maintains the second highest expanded interconnection rates in the country,"[28] despite the almost 50% rate reduction in the DS1-equivalent rate involved in the instant filing over the previous VEIC tariff. MFS alleges that U S WEST's high prices stem from the fact that U S WEST engages in "unreasonable pricing practices."[29]

We disagree. MFS claims that a 1.3 overhead loading factor is excessive. We have demonstrated above that such is not the case.[30] MFS claims that U S WEST uses inappropriate competitive/market non-cost factors in establishing our rates. We have shown above that this is not the case, either.[31] Finally, MFS alleges that

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[28] Id. at 3.

[29] Id. at 4.

[30] See Section II.B.1, supra.

[31] See id.

we use LRIC when it suits our purposes and short run incremental cost when that is more convenient. Again, we have demonstrated above that MFS is incorrect.[32]

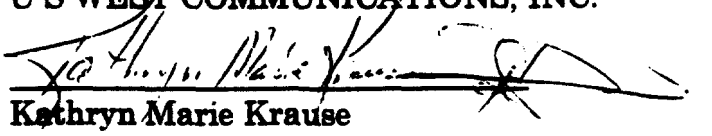
There is nothing unlawful about U S WEST's rates. There is nothing unreasonable about them. On the contrary, both our VEIC rates, and the methodology that produced them, are lawful. They should be permitted to go into effect without regulatory intervention.

III. CONCLUSION

For the above-stated reasons, U S WEST urges the Commission to reject those petitions opposing U S WEST's VEIC IDE and service tariff and allow the tariff to go into effect as scheduled.

Respectfully submitted,

U S WEST COMMUNICATIONS, INC.

By: 

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May 3, 1995

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

ATTACHMENT A

ORIGINAL COPY (DISREGARD NOT RED)

CC 93-162

8-20-9

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Local Exchange Carriers' Rates,	)	
Terms and Conditions for Expanded	)	CC Docket No. 93-162
Interconnection for Special Access	)	
	)	
U S WEST Communications, Inc.	)	Transmittal Nos. 331,
Revisions to Tariff F.C.C. No. 1	)	338, 362, 368 and 383

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U S WEST COMMUNICATIONS, INC. DIRECT CASE

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August 20, 1993

It would be total form over substance for U S WEST to require interconnectors to maintain insurance to cover certain losses and monetary obligations and then not require demonstrated proof of the necessary coverage. Prudent asset management requires otherwise.

There should be no adverse result to interconnectors from this requirement. Insurance carriers and brokers/agents provide these services for their insurers at no charge. Acceptable certificates of insurance are standard industry ACORD forms.[212]

L. "Are the LECs' liability provisions reasonable?"[213]

1. "LECs should explain the policies articulated in their tariffs concerning an interconnector's right of action against a LEC for negligence, gross negligence, willful misconduct, or intentional harm. LECs should explain why these provisions are reasonable. They should also explain why it is reasonable for them to include language limiting their own liability while they hold interconnectors liable for more than they would assume under their tariffs."[214]

The fact that the Bureau has deemed it appropriate to "investigate" the LEC "liability provisions" in this isolated proceeding borders on incredible. Why such an investigation is warranted with regard to some category of customers called "interconnectors," as opposed to the LEC-customer universe as a whole, is totally unexplained and defies logic.

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[212]ACORD forms represent industry standards.

[213]Investigation Order at 36(L).

[214]Id. at 37 ¶ 66 Item (a). Item (b) is directed to a specific LEC, and U S WEST, therefore, does not respond to it.

What this area of inquiry does demonstrate, however, is that the Bureau (and perhaps the Commission, as well) sees the LECs "expanded interconnection" offerings as something above and beyond (or at least very different from) the LECs' "standard" tariffed services. The propriety of such determination is worth pursuing.

Most LECs, and U S WEST in particular, have argued that the Commission prescribed EIC service is different from all other LEC services: At its most egregious, it amounts to a forcible and compelled occupation of LECs property in violation of the Fifth Amendment to the Constitution. At its most benign, it catapults the LECs into a business they never voluntarily agreed to enter, i.e., the real estate leasing business.

But, assuming that the Bureau was not intending to validate these aspects of the "differences" between EIC service and other LEC services, the reasons for the Bureaus' sudden interest in the LECs' limitation of liability provisions is enshrouded in mystery.

U S WEST has had "liability" provisions in our tariffs for longer than MFS or Teleport have been in existence. The general theory is that by limiting LECs' liabilities to third parties, and permitting them to recover from indemnitees, LECs' rates can remain lower than they otherwise would, with regard to the general ratepaying customer.

What prompts regulatory concern over this matter at this time can be attributed more to politics and shrill hyperbole than

to any reasonable lack of understanding as to the reasons for -- or the particular text of -- those provisions. Either the theory behind common carrier limitations of liability is true or it is not. If it was true before EIC service, it remains so. If it was not (or is no longer true) then a separate investigation into the provisions overall should be conducted.

U S WEST's EIC service liability provisions were modified only slightly from our general limitation of liability provisions. Those provisions make clear that "The Telephone Company shall not be liable for any act or omission of any other carrier or customer providing a portion of a service, nor shall the Telephone Company for its own act or omission hold liable any other carrier or customer providing a portion of a service."[215] Simply put, for most actions both parties are responsible for their own actions.

Having assumed responsibility, however, the Telephone Company (i.e., U S WEST) then "limits" its responsibility in certain circumstances: with regard to labor difficulties, governmental orders, civil commotions, criminal actions against us, acts of God and other actions beyond our control;[216] for "casualty" (not amounting to any of the force majeure

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[215]U S WEST Tariff F.C.C. No. 1 at § 2.1.3(A)(1). This provision pre-existed the introduction of EIC services.

[216]Compare id. at § 2.1.3(A)(4). This provision pre-existed the establishment of EIC services.

circumstances);[217] with regard to personal or bodily injury to interconnector's employees, agents, contractor's or invitees;[218] with regard to damage to the interconnector's personal property and/or fixtures -- regardless of cause.[219]

Thus, in the matters of force majeure and the matter of bodily injury, U S WEST assumes the same liability with regard to interconnectors as it does with regard to all other customers: either none or only for willful misconduct. It is really only in the matter of "property" damage that U S WEST's limitations of liability changed, and then only slightly. Rather than assuming liability for our "willful misconduct" with regard to EIC service (as is the standard for other U S WEST-provided services),[220] U

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[217]See id. at § 2.1.3(D). This provision was added for EIC service.

[218]See id. at § 2.1.3(C)(1). U S WEST has no liability "in the absence of willful misconduct." This provision was added to the EIC Tariff, but was modelled on the pre-existing provision § 2.1.3(B)(1). For the reasons discussed below in the text, U S WEST deemed it appropriate to address bodily/personal injury separate and apart from property damage, which the existing § 2.1.3(B)(1) did not do.

[219]See id. at § 2.1.3(C)(2).

[220]Compare id. at § 2.1.3(B)(1). Why interconnector's necessarily would want a LEC to assume responsibility for "willful misconduct" is not explained. With regard to personal property damage, regardless of the cause of the injury, an interconnector would (under U S WEST's EIC service model) have recourse to their insurance. With regard to a service outage, even if U S WEST assumed liability for willful misconduct, the interconnector's sole remedy would be a credit for service outage (compare § 2.1.3(C)(3) and its corollary for non-EIC service customers, § 2.1.3(B)(1)). By stating a sole remedy for a service disruption, U S WEST has precluded other remedial actions/claims, such as those for lost profits or revenues. Because we wanted to make this clear, we specifically included §§

(continued...)

S WEST sought to separate out liability for bodily injury versus property damage.

Historically, U S WEST did not usually come into contact with the "property" of customers (especially since the conclusion of Computer II and divestiture). Thus, the limitation of liability pre-existing EIC service was rather vague with regard to "damage" to such property. The current limitation, as found in the General Terms and Conditions of U S WEST's Tariff F.C.C. No. 1 at § 2.1.3(B)(1), addresses "bodily injury" specifically but "liability" in a very general sense. In most circumstances, the "liability" would be for lost service, rather than damage to property.

In response to recommendations from our Asset Protection and Risk Management Organization, it was determined that all personal property damage matters should be handled via the vehicle of insurance, regardless of fault or responsibility. Thus, it is something of a misnomer to say that U S WEST has "limited" its liability with regard to property damage to an interconnector's property. Rather, U S WEST has no liability with regard to it at all, even if something that causes it damage was the result of our actions.[221]

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[220](...continued)
2.1.3(C)(3) and 2.3.13(B)(6) to our EIC Tariff, so that interconnectors would insure against such outages, however caused (by mistake, negligence, gross negligence, willful misconduct). Such a limitation is a common contractual provision.

[221]In this regard, U S WEST's insurance provision (§ 2.3.13 and § 2.1.3(C)(2)) are amendments to, or restrictions of, the broad language of § 2.1.3(A).

Even more perplexing than the Bureau's sudden interest in the LEC limitation of liability provisions is its suggestion that the LEC should explain why it holds interconnectors to a standard of liability higher than the LEC itself assumes. In essence, the Bureau inquires as to why the LEC's tariffs do not demonstrate something along the lines of "reciprocity."[222]

What this "reciprocity" is, is not clearly explained. It appears to take the following formulation: If a LEC restricts its liability in its tariff to something like "gross negligence," then a LEC should seek no liability (or recompense) from an interconnector in the absence of similar liability. There are a couple of evident problems with this formulation.

A LEC tariff is its statement of the terms and conditions under which it will offer a service. Those terms and conditions, in turn, aid in the establishment of the cost (and the ultimate price) that a service offering assumes. While the tariff is a contract, to be sure, it is not a mutually negotiated one (with quid pro quos for things like increased assumptions of liability).

Assume, for purposes of example, that a LEC assumed liability only for gross negligence and that the LEC accorded similar liability assumption for all its customers.[223] Who

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[222]See Investigation Order at 36-37 ¶ 64.

[223]This "assumption" would probably not show up in a LEC tariff provision, per se (because it is not the LEC's job to state customer "liabilities"), but rather in the "indemnification" provisions. Compare PacBell's observation that (continued...)

bears (or assumes the costs associated with) liability between the LEC's gross negligence and the individual customer's gross negligence? NOBODY? Obviously, there is a problem. Someone bears that responsibility -- the "general ratepaying body" or the Company overheads. If a LEC accorded interconnectors the "special treatment" of having no indemnification obligation unless they were grossly negligent, all other LEC customers would pay for the according of that privilege.[224]

While U S WEST cannot speak for all LECs, we know why our tariff does not demonstrate reciprocity: No other customer is accorded reciprocity and we see nothing special about

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[223](...continued)
"reciprocity" discussions in this matter are illogical, since only the LEC is providing service. See Investigation Order at 37 ¶ 65.

For example, as stated, under U S WEST's general responsibility/limitation provisions, all customers assume responsibility for their actions (see § 2.1.3(A)(1)). U S WEST does not generally address a customer's liability for its actions except in certain circumstances: indemnification (§§ 2.1.3(A)(2), 2.1.3(A)(5), 2.1.3(C) (EIC service) and 2.3.8(A), 2.3.8(C) (EIC service)) and customer reimbursement for damages to U S WEST's facilities (see §§ 2.3.1(A) and 2.3.1(C)(2) (EIC service).

[224]As U S WEST's Tariff F.C.C. No. 1 at § 2.1.3(A)(1) now stands (and has stood for some years), customers have liability for their actions regardless of fault (whether the action was a mistake or was the result of intentional misconduct).

In essence, then, what the Bureau inquires about is the possibility of making an interconnector (as opposed to all other customers) responsible for reimbursement to U S WEST for damage caused by an interconnector only if its actions in causing the damage reach a certain threshold; or in reducing an interconnector's indemnification obligations. Such special treatment is unwarranted either by the status of "interconnectors" or by the service they purchase.

"interconnectors" that would warrant such accommodation. If the Bureau deems the fate of the interconnectors unfortunate, then it should open a general docket on the limitation of liability/ indemnification provisions of common carriers and work the matter through to the benefit of all LEC customers. LECs should not be required to indemnify interconnectors for LEC negligence, when they do not do so for any other customer.[225]

M. "Are the LECs' provisions regarding whether to bill from their state or interstate expanded interconnection tariffs reasonable?"[226]

1. "LECs should discuss whether the use of the ten percent rule to determine the jurisdictional nature of the service is reasonable. All parties commenting on this issue should address how the ten percent rule, as used in the LECs' special access tariffs, should apply to the rate elements in the collocation tariffs. Parties opposing the use of this method should explain why they believe the alternative they offer is more reasonable."[227]

Clearly, the Commission's expanded interconnection policies are directed to interstate traffic and those carriers who transport such traffic. Such provisions have not been applied by the Commission preemptively to the states.

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[225]Clearly, if LECs are required to change their limitation of liability/indemnification provisions, costs (and associated prices) for LECs' services will increase. Interconnectors -- like the rest of a LEC's customer base -- should share in those increases.

[226]Investigation Order at 38(M).

[227]Id. at ¶ 68, Item (a).

ATTACHMENT B

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OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Local Exchange Carriers' Rates, Terms, and	)	CC Docket No. 94-97,
Conditions for Expanded Interconnection	)	Phase I
Through Virtual Collocation for Special	)	
Access and Switched Transport	)	

REBUTTAL TO OPPOSITIONS TO U S WEST COMMUNICATIONS, INC. DIRECT CASE

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April 11, 1995

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Local Exchange Carriers' Rates, Terms, and	)	CC Docket No. 94-97,
Conditions for Expanded Interconnection	)	Phase I
Through Virtual Collocation for Special	)	
Access and Switched Transport	)	

REBUTTAL TO OPPOSITIONS TO
U S WEST COMMUNICATIONS, INC. DIRECT CASE

I. INTRODUCTION AND SUMMARY

U S WEST Communications, Inc. (or "U S WEST") herein responds to those filings made in opposition to U S WEST's Direct Case.[1] The vast majority of those filings take umbrage with U S WEST's disagreement with the Federal Communications Commission's ("Commission") and the Common Carrier Bureau's ("Bureau") policy determination with respect to the "comparability" of certain services vis-à-vis our Virtual Expanded Interconnection ("VEIC") services -- this, despite the fact that we were asked to comment on the matter. These parties argue that U S WEST is not at liberty to dispute the "comparability" of services such as DS1 or DS3 or Self

[1] U S WEST Communications, Inc.'s Direct Case filed herein Mar. 21, 1995. Oppositions to the Direct Case were filed Apr. 4, 1995, by MCI Telecommunications Corporation, Electric Lightwave, Inc. ("ELI"), MFS Communications Company, Inc. ("MFS"), McLeod TeleManagement, Inc. ("McLeod"), Teleport Communications Group Inc., and Time Warner Communications Holdings, Inc. A Response to Phase I Direct Cases by the Association for Local Telecommunications Services ("ALTS") was also filed Apr. 4, 1995.

Healing Alternate Route Protection ("SHARP") with VEIC services, as such "comparability" has already been determined by the Commission. Furthermore, these parties argue that, regardless of U S WEST's position on "comparability," we were not free to fail to provide information demanded by the Bureau.[2]

These parties misread both the Bureau's TRP Order[3] and its Investigation Order,[4] as well as U S WEST's Direct Case. Regardless of U S WEST's position regarding the "comparability" of certain services to VEIC services, a position that we have no obligation to hide or obfuscate, we responded directly and in full (with but one minor exception, discussed below) to the questions posed by the Bureau in the Investigation Order. Our compliance is outlined below.

II. INFORMATION PROVIDED REGARDING "COMPARABLE" SERVICES

In the Bureau's TRP Order, the Bureau made the following remark: "For purposes of this request, these special access and switched services for which overhead factors must be listed are not limited to the generic electrical and optical services. They also include the discounted volume and term services; channel termination services; interoffice service comprised of channel terminations and chan-

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[2] Compare ALTS at 16 n.11.

[3] See In the Matter of Commission Requirements for Cost Support Material To Be Filed with Virtual Collocation Tariffs for Special Access and Switched Transport, Tariff Review Plan Order, 9 FCC Rcd. 5679 (1994) ("TRP Order").

[4] See In the Matter of Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport, CC Docket No. 94-97, Phase I, Order Designating Issues for Investigation, DA 95-374, rel. Feb. 28, 1995 ("Investigation Order").

nel mileage; and any specialized service offerings, e.g., self-healing network services."[5] There is nothing in the current record or the Investigation Order that suggests U S WEST did not comply with this requirement. We did.

Furthermore, there was nothing in the Investigation Order that required we comply with the TRP Order requirements a second time. When the Bureau issued its Investigation Order, the Bureau noted that none of the local exchange carriers ("LEC") mandated to provide virtual collocation had used uniform overhead loadings with respect to their high capacity special and switched access services vis-à-vis their VEIC services.[6] And, the Bureau was of the opinion that the lack of uniformity had not been sufficiently justified. The Bureau determined that, "it appeared that the great disparity in loadings primarily reflected market conditions; most LECs tended to assign low overheads in markets where they faced actual or potential competition from interconnection, and high overheads where they did not."[7] The Bureau concluded that "most LECs' proposed overhead loadings appeared unreasonable."[8]

As a result, the Bureau established in its Investigation Order certain very specific questions that it requested LECs respond to. For example, in paragraph 17, the Bureau asked whether LECs thought there were "additional services that

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[5] TRP Order, 9 FCC Rcd. at 5682 ¶12 (footnotes omitted).

[6] Investigation Order ¶ 8.

[7] Id.

[8] Id. (footnote omitted).

should be considered comparable services" to VEIC service.[9] Having been asked, U S WEST was certainly well within the bounds of propriety in stating our fundamental position: we do not believe that any of our other common carrier services are comparable to our VEIC services. Thus, we certainly did not think that there were "additional" ones to add.

Next U S WEST was required to "list all of [our] unit investment components, and all of the annual cost factors applied to those components,"[10] not for each service that the Commission or the Bureau in its TRP Order had previously identified as "comparable" but only for four services specifically referenced in the Investigation Order: "DS1 virtual collocation service; DS3 virtual collocation service; a comparable DS1 service with the lowest overhead loading; and a comparable DS3 service with the lowest overhead loading."[11] U S WEST did that, as well. We identified, from the list proffered by the Bureau, the services we considered "most comparable" to our VEIC service, and explained that we did not consider SHARP to be comparable because of the way in which it was provisioned.[12]

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[9] Id. ¶ 17(a).

[10] Id. ¶ 17(b).

[11] Id.

[12] See U S WEST Direct Case at 4. Our SHARP service utilizes a ring architecture, a network provisioning model very different from our VEIC services. From the perspective of network provisioning, our DS1 monthly channel termination rate element (excluding SHARP and interoffice mileage) and our DS3 Capacity of One monthly rate element (excluding interoffice mileage) are certainly "more comparable" than SHARP. They are month-to-month services and contain, like VEIC services, no interoffice mileage. While SHARP may be provisioned in a way that is similar to our competitors' retail ring services (thus, suggesting that we might offer a retail service "comparable" to our competitors' retail service, see, e.g., MFS at 16; ELI at 5-6; McLeod at 4-5), it is hardly "comparable" to our network VEIC services.

Next, U S WEST was required to "explain whether the annual cost factors were applied in the same manner"[13] not to any and all other (theoretically) comparable services, or even those described as comparable in the TRP Order, but only "for the two virtual collocation services and the two comparable services"[14] we identified in response to the above question, specifically the DS1 monthly channel termination rate element (excluding SHARP and interoffice mileage) and the DS3 Capacity of One monthly rate element (excluding interoffice mileage).[15] If the same factors were not used with respect to the services identified, U S WEST was required to explain. U S WEST complied with the information request here as well.

Next, U S WEST was to list certain investments and cost components not for each service which the Commission or Bureau might have deemed or declared "comparable" in some prior Order, but with respect to the "comparable DS1 and DS3 services identified in [paragraph 17] (b)"[16] -- again the DS1 monthly channel termination rate element (excluding SHARP and interoffice mileage) and the DS3 Capacity of One monthly rate element (excluding interoffice mileage). U S WEST provided this information.

Another information requirement was that U S WEST submit certain data "detailing the percentage of DS1 and DS3 channel terminations that are sold with-

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[13] Investigation Order ¶ 17(c).

[14] Id.

[15] Id.

[16] Id. ¶ 17(d).

out interoffice mileage."[17] Lacking the information in precisely the form requested by the Bureau, U S WEST responded to the best of our ability with respect to this information request.

The one and only area in which U S WEST might not have totally complied with the Bureau's requests resulted from an oversight on U S WEST's part and produces no prejudice to any party. With respect to a single information requirement, the Bureau references back to the TRP Order and its discussion of comparability, rather setting up certain comparisons specific to the Investigation Order.

In paragraph 17(e), the Bureau states that "[i]f a LEC concludes that any of the comparable services described in the TRP Order should not be considered comparable, it should explain how the investment components of those services differ from the investment components of the corresponding DS1 or DS3 virtual collocation services."[18] Clearly, U S WEST was invited to comment on whether or not we considered the services already described in the TRP Order to be really comparable (and comment we did). However, having accepted the invitation to comment on the fact that we considered the services earlier identified in the TRP Order not to be "comparable," we failed to provide the investment component information that was required from one coming to that conclusion. The investment components of the services we deem "not comparable" (all services discussed in the TRP Order other

[17] Id. ¶ 17(f).

[18] Id. ¶ 17(e) (footnote omitted).

than VEIC services), are attached as Attachment A to this filing. U S WEST apologizes for our oversight in this regard.

For the record, however, and to allay certain of the unfounded and misguided allegations and arguments that were made with respect to our Direct Case, U S WEST did submit information on SHARP in September, 1994, with respect to Transmittals 530 and 531[19] which show that a DS3 with SHARP, capacity of 36, 120-month term,[20] optical, had an overhead loading factor of 2.2076. The difference between this figure and that proffered by certain opponents of our Direct Case is the result of the fact that the opponents provide an overhead factor applicable to a "stand-alone SHARP," which does not exist. SHARP is not sold without a separate channel termination rate element (be it a DS1 or a DS3). Thus, SHARP (and any overhead loading discussion involving SHARP) can only be meaningful where the overhead loading associated with SHARP is combined with the overhead loading of a necessary channel termination.

The 2.2076 represents such a combined overhead factor. Therefore, even if the Bureau were inclined to consider SHARP as the "more comparable" offering to our VEIC services than the ones U S WEST identified in our Direct Case, it is clear that an overhead loading factor of 1.07, as suggested by certain opponents based on

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[19] See U S WEST Transmittal Nos. 530 and 531, filed Sep. 1, 1994. Portions of those transmittals relevant to our rebuttal are attached hereto as Attachment B. Transmittal Nos. 530 and 531 were identical with respect to the information being provided.

[20] The 120-month term is not generally in great demand. However, the overhead loading associated with this term is the same as the 60-month term.

a 1990 SHARP tariff filing,[21] would not be the appropriate overhead factor. U S WEST would be happy to apply a 2.2076 overhead loading factor to our VEIC services, should our opponents continue to press the logical and legal legitimacy of their "comparability" arguments.

One other argument of our opponents should be addressed, although U S WEST fails to see the relevance of the argument. MFS references a tariff filing made by U S WEST[22] in which U S WEST separated our existing switched transport Entrance Facility ("EF") into electrical and optical rate elements. In MFS' reference, it seems to argue that, because U S WEST did not consider the switched access EF as a comparable service to the VEIC elements and, therefore, did not provide detailed cost data for the EF, the overhead loading factor for the EF must surely be lower than that used for U S WEST's VEIC rate elements.

In the tariff filing referenced by MFS, U S WEST restructured our EF rate for DS3 EF because the existing electrical EF rate was used for both electrical and optical. Since we felt it inappropriate to charge electrical rates for an optical facility, U S WEST restructured the DS3 EF rate into an electrical and an optical rate. Both the electrical and optical switched access rates match the month-to-month DS3 capacity of two rates for the DS3 Private Line Transport Service. This results in the DS3 Optical EF having an overhead loading factor of 1.949, well above the 1.30

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[21] See MFS at 16-18; ELI at 4-5; McLeod at 5.

[22] See MFS at 18 (referencing U S WEST Tariff F.C.C. No. 5, Transmittal No. 589, issued February 1, 1995).