

3. To one degree or another, virtually all other parties disagreed with the Staff and OCC position. The USWC list of elements subject to unbundling was virtually identical to the Staff's and the OCC's list with one exception. In USWC's view, operator systems are not essential to competition in the local exchange market, inasmuch as these services are already competitive. Therefore, USWC opposed unbundling of operator systems. Other comment, however, suggested that services provided by operator systems (e.g., intercept; operator handled calls such as collect calling, calling card, person-to-person, etc.; busy verification; busy interruption; etc.) are critical to a new entrant's ability to enter the local exchange market. See AT&T January 22, 1996 Comment, pages 14-15. We are persuaded by that comment, and conclude that operator systems should be subject to the rule's unbundling mandate.

4. USWC also expressed concern with designating some elements as "essential," since this designation may require it to impute the charges for those elements into its prices for other services. Notably, Rule 7.6.2 directs that imputation shall be required (i.e., a provider shall impute its charges for unbundled network elements into the rates for its own services) only for elements which are "bottleneck monopoly input(s)". This provision is consistent with the suggestion of a number of the commenting

parties. For example, Staff pointed out that an imputation requirement will limit pricing flexibility on the part of incumbent LECs (and the Commission) with respect to retail services. Such a requirement, if not carefully circumscribed, might give new entrants an undeserved competitive advantage. Thus, Staff and other parties recommended that imputation requirements be limited to bottleneck monopoly inputs only.

5. Rule 7.6.2 further provides that the designation of an element as an "essential facility or function" (i.e., inclusion of a network element in Rule 6.2) shall not constitute a conclusive finding that the element is a bottleneck monopoly input. In effect, Rule 7.6.2, leaves open the question regarding imputation requirements for specific unbundled services. We conclude that this question should be decided in future proceedings (e.g., where specific rates for a provider's unbundled network elements are established).<sup>2</sup>

6. AT&T and MCI supported the Staff and OCC list of unbundled network elements also with one exception. These parties argued that it is essential for the local loop component to be unbundled into three separate elements: loop feeder, loop concentration, and loop distribution. According to this contention, new entrants should have the ability to use only those portions of the loop which are necessary to serve their customers. Therefore,

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<sup>2</sup> Rule 7.6.1 also states that imputation shall be required with respect to a provider's prices for interconnection, the termination of local traffic, and "White Pages" directory listings, in accordance with the Costing and Pricing Rules. We point out that Rule 4(1)(f) of the Costing and Pricing Rules states that cost studies for any service offerings that include, as underlying functionalities, any tariffed fully regulated service must impute the tariffed rates as a part of the cost-of-service.

competing providers should have the capability to interconnect with the incumbent LEC at any of the above-specified points (i.e., loop feeder, loop distribution, or loop concentration).

7. Comment by USWC and CITA indicated that it would be difficult to implement unbundling of the loop into feeder and distribution. For example, USWC claimed that existing loop plant is not concisely segmented into "feeder" and "distribution" plant with clearly defined points of interface. In addition, USWC suggested, the current loop network was not designed with the thought of unbundling in mind, and assumed one provider. According to USWC:

With multiple providers interfacing at points in the loop, new interfaces would have to be developed, so that different providers could interconnect. New security procedures would be needed to assure network integrity . . . The fact is, unbundling the loop into feeder and distribution cannot be accomplished without significant expenditures to reengineer the way loops are provisioned.

USWC January 17, 1996 Comments, page 60. This comment, at the very least, raises questions regarding the advisability of loop unbundling as advocated by the new entrants. Additionally, § 271(c)(2)(B)(iv) of the Act requires unbundling of the loop without any mention of further unbundling of the loop into subparts. At this time we decline to adopt the AT&T/MCI suggestion.<sup>24</sup>

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<sup>24</sup> As suggested by Staff and the OCC, we may revisit the list of elements required to be unbundled after the FCC has made its determinations regarding unbundling.

8. Other parties such as NPS and Comptel took greater exception to the Staff and OCC unbundling recommendation. These parties claimed that the proposal is overly restrictive in its unbundling mandate in light of the provisions of the Act. Specifically, these parties argued that the Act's unbundling requirements are not limited to "essential" or "necessary" facilities. See §§ 251(c)(3), 251(d)(2)(B). These parties interpret the Act as directing unbundling in any instance where failure to unbundle would impair a provider's ability to provide the service it seeks to offer. Therefore, it was claimed, the Staff and OCC proposal is inconsistent with the Act.

9. We do not agree with these assertions. Section 251(d)(2) directs that, in determining what network elements should be unbundled, the FCC shall consider: (1) whether access to such network elements as are proprietary in nature is necessary; and (2) whether the failure to provide access to network elements would "impair" the ability of a telecommunications carrier to provide the services it seeks to offer. These provisions indicate, first, that incumbent LECs may not be required to provide unbundled access to proprietary network elements. Second, the FCC's forthcoming regulations will provide access to non-proprietary elements, apparently, only in instances where a provider's ability to offer service would be impaired by failure to unbundle. We agree with USWC that this "impairment" standard appears to be similar to the essentiality criterion set forth in HB 1335. In any event, it is

not apparent at this time that our adopted rule and the rationale for the rule are inconsistent with the Act.<sup>25</sup>

### B. Applicability of Unbundling Rules

1. Rule 6.1 requires incumbent telecommunications providers to unbundle the facilities or functions listed in the rule. Significantly, the rule does not compel other providers (i.e., providers not classified as "incumbents") to unbundle their networks. According to the definition of "incumbent telecommunications provider" contained in Rule 2.10, all existing LECs (as of February 8, 1996, the effective date of the Act, will be considered as incumbent providers and required to unbundle their networks. However, Rules 2.10 and 6.1, in effect, provide that new entrants shall be considered to be incumbents three years after the date of certification, unless the Commission determines that such designation is not in the public interest. Hence, absent a specific Commission determination to the contrary, a new entrant will be compelled to unbundle its network, in accordance with the rule, three years after the date of its certification. These provisions are based upon the final recommendations of Staff and the OCC regarding the applicability of the unbundling mandates. The new entrants and the incumbent LECs (i.e., USWC and independent telephone companies represented by CITA) emphatically disputed these recommendations for vastly different reasons.

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<sup>25</sup> As previously stated, we may revisit the rules after the FCC adopts implementing regulations for the Act.

2. The new entrants opposed the temporary exemption from unbundling requirements proposed by Staff and the OCC. Instead, these parties maintained that new providers should be flatly exempted from the Rules' unbundling requirements without limitation. TCI et al. suggested that the exemption for new entrants continue until the incumbent LECs are no longer the dominant providers in the local exchange market. At this point, the entire industry should be deregulated. Thus, in the contemplation of TCI et al., new entrants would never be compelled to offer unbundled network elements to their competitors. Other parties such as MFS and Comptel apparently intend that this issue (i.e., the necessity for new entrants to unbundle their networks) be determined by the FCC pursuant to the provisions of § 251(h)(2).<sup>28</sup>

3. As grounds for their positions, the new entrants argued: Significant policy reasons exist for not requiring new entrants to unbundle their networks. For example, TCI et al. stated that an unbundling mandate for new entrants would:

--extinguish any incentive for new providers to invest in or develop new infrastructure;

--deter entry into the market on the part of facilities-based carriers;

--eliminate incentives for providers to upgrade or expand their networks;

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<sup>28</sup> These provisions empower the FCC to provide for the treatment of a new entrant as an incumbent under specified circumstances. These circumstances are: (1) the new entrant occupies a position in the market for telephone exchange service within an area that is comparable to the position occupied by an incumbent LEC; (2) such carrier has substantially replaced an incumbent LEC; and (3) such treatment is consistent with the public interest, convenience, and necessity.

--in the case of cable system operators, negatively impact their technical ability to provide their core cable television business.

These results would follow under an unbundling requirement, TCI et al. argued, since competitors would have nearly immediate access to the network of a new entrant.

4. The new entrants also contended that HB 1335 and the Act prohibit application of an unbundling rule to new entrants. With respect to the provisions of HB 1335, TCI et al. asserted that subsection 40-15-503(2)(b) directs the Commission to establish rules for the unbundling of "essential" facilities. TCI et al. suggested that the term "essential" refers to the bottleneck facilities owned by incumbent LSCs which are monopolies, or, at least, the overwhelmingly dominant providers in the market.

5. As for the provisions of the Act, the new entrants claimed that it also prohibits us from applying an unbundling requirement to new providers. These parties first argued that such a rule would constitute a barrier to entry (i.e., potential facilities-based providers would not enter the market for fear of having to afford access to their networks to competitors) in contravention of § 253. Second, the new entrants suggested that the Act (i.e., § 251(a-b)) intends that unbundling mandates apply to incumbents only. Given that intention, it was asserted, the Commission is precluded from adopting unbundling rules which treat new entrants and incumbents equally.

6. The new entrants specifically opposed the Staff and OCC recommendation to exempt new providers from the unbundling rule for three years (absent further directives from the Commission).

Besides contravening the Act and HB 1335, the parties alleged, this proposal constitutes an arbitrary determination as to when new entrants will be compelled to unbundle their networks. TCI et al. reasoned that the imposition of unbundling mandates on new entrants would be appropriate only when those providers possess a substantial share of the local exchange market and the incumbent LECs are no longer dominant providers. Finally, it was suggested that the Staff and OCC rule usurps the authority of the FCC to determine when new providers shall be treated as incumbents. See § 251(b)(2).

7. USWC and CITA disputed the arguments by the new entrants. These parties argued that the pro-competition policies expressed in HB 1335 necessitate application of unbundling requirements to all providers equally. Specifically, USWC and CITA claimed: It is in the interests of consumers that all local exchange providers unbundle their networks. Such unbundling would assure choices (both in quality and price) for providers seeking to purchase unbundled elements resulting in lower prices to end-users. In addition, a uniform unbundling mandate would impose the same cost requirements on providers, forcing them to be more efficient, again resulting in lower prices to consumers.

8. USWC and CITA further argued: The TCI et al. claim that unequal unbundling requirements should be approved in order to encourage new investment is invalid. Notably, TCI's Colorado network already is as extensive in the urban areas of the State as is USWC's network. Other potential competitors already have facilities-based networks in the regions of the State where com-

petition is likely to occur (e.g., the Denver metro area). Thus, there is no justification for limiting unbundling to incumbent providers. Finally, USWC and CITA observed that, although the Act directs only incumbents to unbundle, it does not specifically preclude State commissions from adopting rules which would also require new entrants to unbundle their networks.

9. As noted above, we accept the Staff's and OCC's recommendation for a temporary unbundling exemption for new entrants. Staff and the OCC reasoned that a three-year period of time would give new entrants an opportunity to establish a market presence. In addition, eventual unbundling will serve to enhance competition. Their proposal also permits a new provider to further defer unbundling if it is able to demonstrate to the Commission that such action is in the public interest. We agree with this proposal and the Staff's and OCC's rationale.

10. We also agree, with USWC and CITA to the extent they point out that some of the likely competitors in the local exchange market (e.g., TCI, AT&T, MCI, etc.) already have facilities in place. Moreover, we observe that the willingness of new entrants to construct new facilities will, in addition to unbundling requirements, depend on other factors such as the rates eventually set for unbundled network elements. Therefore, TCI et al.'s arguments regarding disincentives to new investment as a result of unbundling are not totally persuasive. TCI et al. further claimed that the lack of an unbundling requirement for new entrants would actually encourage them to undertake new investment in their network. It is less than clear that such a result will

follow. For example, it is possible that providers would forego new investment if they could continue to obtain network elements from incumbent LECs.

11. We do agree with the new entrants that, in light of the currently dominant market position of the incumbent LECs, it is appropriate to apply the unbundling rule to the incumbents only. Since this disparate treatment may result in less choice for providers, as argued by USWC, that dissimilar treatment should be limited. Generally, we find that the Staff's and OCC's approach reasonably balances all interests herein. That approach will also permit new entrants to further defer unbundling of their networks if the public interest requires it.

12. Finally, we note our disagreement with the arguments that the adopted rule is inconsistent with the Act. The provisions cited by the new entrants do not expressly prohibit States from requiring new entrants to unbundle. The discussion above also explains that the States retain extensive authority to regulate upon matters relating to unbundling. See paragraph E.3

### C. Pricing and Tariffing for Unbundled Elements

The parties substantially disagreed with respect to pricing and tariffing of unbundled network elements. The issues here are identical to those relating to the pricing and tariffing for interconnection. See discussion above, paragraphs C, E.6 through E, E.6 Our holding here is identical. Briefly, Rule 7.3 requires providers, who are required to unbundle, to file tariffs. We find a tariff process to be appropriate for the purpose of

establishing rates, terms, and conditions for unbundled network elements. We reject any argument that the Act prohibits any tariff requirements. In addition, the rates for unbundled elements will be set in accordance with the directives contained in Rule 7.5.

#### **IX. CONCLUSION**

The rules attached to this decision as Attachment A will be adopted (subject to applications for rehearing, reargument, or reconsideration). After consideration of the extensive comment filed in this proceeding, we find that the adopted rules are consistent with the legislative directives set forth in HB 1335.

#### **X. ORDER**

##### **A. The Commission Orders That:**

1. The rules attached to this decision as Attachment A are hereby adopted. This order adopting the attached rules shall become final 20 days following the mailed date of this decision in the absence of the filing of any applications for rehearing, reargument, or reconsideration. In the event any application for rehearing, reargument, or reconsideration to this decision is timely filed, this order of adoption shall become final upon a Commission ruling on any such application, in the absence of further order of the Commission.

2. Within 20 days of final Commission action on the attached rules, the adopted rules shall be filed with the Secretary of State for publication in the next issue of the Colorado Register

along with the opinion of the Attorney General regarding the legality of the rules.

3. The finally adopted rules shall also be filed with the Office of Legislative Legal Services within 20 days following the above-referenced opinion by the Attorney General.

4. The 20-day period provided for in § 40-6-114(1), C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the mailed date of this decision.

5. This Order is effective upon its Mailed Date.

B. ADOPTED IN SPECIAL OPEN MEETING March 29, 1986.

(SEAL)



THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

ROBERT J. HIX

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CHRISTINE E. M. ALVAREZ

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VINCENT MATKOWSKI

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Commissioners

ATTENT: A TRUE COPY

Bruce N. Smith  
Director

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**THE  
PUBLIC UTILITIES COMMISSION  
OF THE  
STATE OF COLORADO**

**RULES ON  
INTERCONNECTION AND UNBUNDLING**

**4 CCR 723-39**

**BASIS, PURPOSE, AND SCOPE AND APPLICABILITY.**

The basis and purpose of these rules is to prescribe the provision of nondiscriminatory access to, and interconnection with, the facilities of the telecommunications providers' networks to any other telecommunications provider offering or seeking to offer telecommunications products or services to the public. These rules also provide for the unbundling of certain telecommunications providers' networks. These rules provide an environment that will actively promote the competitive nature of the telecommunications industry, increase the affordability of telecommunications services, encourage technological advancements, and expand customer choices in the marketplace.

These rules are clear and simple. They can be understood by persons or entities expected to comply with them. They do not conflict with any other provision of law. There are no duplicating or overlapping rules.

These rules are issued pursuant to §§ 40-15-501, et seq. and 40-2-108, C.R.S.

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**RULE 4 CCR 723-39-1. APPLICABILITY.**

These rules are applicable to all certified telecommunications providers that provide telecommunications exchange service in the state of Colorado.

**RULE 4 CCR 723-39-2. DEFINITIONS.**

The meaning of terms used within these rules shall be consistent with their general usage in the telecommunications industry unless specifically defined by Colorado statute or this rule. As used in these rules, unless context indicates otherwise, the following definitions shall apply:

723-39-2.1 Collocation (physical and virtual): Physical collocation occurs when one telecommunications provider owns interconnection facilities physically located within another telecommunications provider's physical premises. Virtual collocation occurs when one telecommunications provider extends its facilities to a point of interconnection within a reasonably close proximity to, but not physically located within, another telecommunications provider's physical premises. In virtual collocation, the provider requesting collocation ("lessee") may request the type of equipment to be used from another provider who owns the space ("lessor"). In such case, the lessee may own, or lease and maintain the equipment.

723-39-2.2 Common transport link: A communications path (1) used by multiple customers and (2) containing one or more circuits connecting two switching systems in a network.

723-39-2.3 Customer: A person, including a telecommunications provider, who purchases a telecommunications service from a telecommunications provider.

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723-39-2.4 Customer network interface: The facilities on or near the customer's premises which allow the customer to interface with the network.

723-39-2.5 Dedicated transport link: A communications path (1) used by one customer and (2) containing one or more circuits connecting two switching systems in a network.

723-39-2.6 Dial tone: An audible tone sent from an automatic switching system to a customer to indicate that the network is ready to receive dial signals.

723-39-2.7 End-user: A person, other than a telecommunication provider, who purchases a telecommunications service from a telecommunications provider.

723-39-2.8 Essential facilities or functions: Those network elements which a telecommunications provider is required to offer on an unbundled basis.

723-39-2.9 Exchange access: The offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services.

723-39-2.10 Incumbent telecommunications provider: A telecommunications provider that on February 8, 1996, provided telephone exchange service in Colorado and either (a) on such date was a member of the exchange carrier association or (b) is a person or entity that became a successor or assign of a member described in clause (a). If a provider has held a Certificate of Public Convenience and Necessity to offer local exchange service in Colorado for three years, such provider shall be considered an incumbent unless the Commission determines that such designation is not in the public interest. A telecommunications provider may also be considered an incumbent telecommunication provider if: (a) such provider occupies a position in the market for telephone exchange

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service within an area that is comparable to the position occupied by a provider described above; (b) such provider has substantially replaced an incumbent telecommunication provider described above; or, (c) the Commission determines that such designation is in the public interest.

723-39-2.11 Interconnection: The process of providing a seamless connecting link between competing networks for the completion of local traffic that originates in the network of one telecommunications provider and terminates in the network of another telecommunications provider.

723-39-2.12 Loop: The facilities which connect a customer network interface to a main distribution frame, or its equivalent.

723-39-2.13 Network element: A facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service.

723-39-2.14 Operational support: A mechanism to facilitate the provision of local exchange services, including but not limited to the taking of service and repair orders, and the exchange of billing data and customer account data in a manner consistent with Federal and Colorado law, through the mutual exchange of information between telecommunications providers. This information may be exchanged in a variety of ways which may include, but are not limited to, electronic interfaces, technical interfaces, or access to databases.

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723-39-2.15 Operator systems: Systems that provide for live or mechanized operator functions that assist end-users with call completion and directory assistance.

723-39-2.16 Originating provider: The telecommunications provider that serves the end-user who originates a local call.

723-39-2.17 Rural telecommunications provider: A telecommunications provider which:

(1) serves only rural exchanges of ten thousand or fewer access lines;

(2) provides common carrier service to any local exchange carrier study area that does not include either: (a) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or, (b) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;

(3) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

(4) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

(5) had less than 15 percent of its access lines in communities of more than 50,000 on February 8, 1996.

723-39-2.18 Service control point (SCP): A node in the signaling network to which informational requests for service handling (for example, routing) are directed and processed. The SCP contains both the service logic and the customer specific information necessary to process individual requests.

723-39-2.19 Signal transfer point (STP): A facility which provides the function of connecting signal links in order to

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transfer appropriate signals from and between the various elements of a signaling network.

723-39-2.20 Signaling links: Transmission facilities in a signaling network which carry all out-of-band signaling traffic between the end office and signal transfer point, the tandem office and signal transfer point, the signal transfer point and service control point, and the signal transfer point and another signal transfer point.

723-39-2.21 Switch: A facility that provides the functionalities required to connect appropriate lines or trunks to a desired communications transmission path. These functionalities may include, but are not limited to: (1) recognizing service requests, (2) obtaining required call specific information, (3) data analysis, (4) route selection, (5) call completion or hand-off, (6) testing, (7) recording, and (8) signaling.

723-39-2.22 Tandem switch: A facility that provides the function of connecting trunks to trunks for the purpose of completing inter-switch calls.

723-39-2.23 Telecommunications: The transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

723-39-2.24 Telecommunications exchange service: The service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge.

723-39-2.25 Telecommunications provider: Any provider of telecommunications exchange services.

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723-39-2.26 Telecommunications service: The offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

723-39-2.27 Terminating provider: The telecommunications provider that serves the end-user who receives a local call.

723-39-2.28 Unbundling: The disaggregation of facilities and functions into multiple basic network products or services so they can be separately offered to other telecommunications providers in a manner that allows requesting providers to combine such elements in order to provide telecommunications services.

**RULE 4 CCR 723-39-3. INTERCONNECTION.**

723-39-3.1 All telecommunications providers shall interconnect directly or indirectly with the facilities and equipment of other telecommunications providers.

723-39-3.2 All telecommunications providers shall provide dialing parity to competing providers of telephone exchange service and telephone toll service, and shall permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays.

723-39-3.3 Telecommunications providers shall provide for the interconnection with the facilities and equipment of any requesting telecommunications provider:

723-39-3.3.1 for the transmission and routing of telephone exchange service and exchange access;

723-39-3.3.2 at any technically feasible point within the provider's network;

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723-39-3.3.3 that is at least equal in quality to that provided by the provider to itself or to any subsidiary, affiliate, or any other party to which the provider interconnects; and,

723-39-3.3.4 (1) at rates, terms, and conditions that are just, reasonable, and nondiscriminatory; (2) in accordance with the rates, terms, and conditions established by the provider pursuant to contract, arbitration, or tariff; and, (3) consistent with the Commission's Rules Prescribing Principles for Costing and Pricing of Regulated Services of Telecommunications Service Providers (4 CCR 723-30).

723-39-3.4 Collocation: A telecommunications provider shall provide, pursuant to rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for the physical collocation of equipment necessary for interconnection or access to unbundled network elements at the telecommunications provider's premises. A telecommunications provider may provide virtual collocation if the Commission determines that physical collocation is not practical for technical reasons or because of space limitations.

723-39-3.5 Each telecommunications provider shall be responsible for constructing and maintaining the facilities on its side of the point of interconnection unless the interconnecting providers agree to some other arrangement.

723-39-3.6 Each telecommunications provider shall construct and maintain its interconnection facilities in accordance with accepted telecommunications engineering standards and practices. Each terminating provider will make available to all originating providers all technical references to documents that provide the technical specifications of the terminating provider's interconnection interfaces. In no event shall a telecommunications

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provider construct or maintain its interconnection facilities under terms and conditions different from the terms and conditions the provider offers to itself, its affiliates, or another telecommunications provider.

723-39-3.7 The Commission's quality of service rules at 4 CCR 723-2 shall apply to the provision of interconnection facilities.

723-39-3.8 Terminating telecommunications providers shall make all required interconnection facilities available within 90 days of a bona fide written request. No unreasonable refusal or delay, or discriminatory provision of service by a terminating provider shall be allowed.

**RULE 4 CCR 723-39-4. COMPENSATION FOR TERMINATING LOCAL TRAFFIC.**

723-39-4.1 For purposes of this rule, local calls originate at the customer network interface of the calling party's provider and terminate at the customer network interface of the called party's provider.

723-39-4.2 Except as provided in Rule 4.8, a terminating provider may charge the originating provider a termination fee for all local calls which originate on the originating provider's network and terminate on the terminating provider's network.

723-39-4.3 The termination fee shall be based on the costs associated with each network element (1) on the terminating provider's side of the point of interconnection and (2) used by the terminating provider to terminate the call.

723-39-4.4 If the originating provider is (1) interconnected to the terminating provider through the purchase of one or more unbundled elements owned by the terminating provider or a third provider or (2) uses one or more unbundled elements owned by

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a the terminating provider or a third provider to originate the call:

723-39-4.4.1 The terminating provider shall charge the originating provider a termination fee in accordance with this rule, and

723-39-4.4.2 The provider of the unbundled elements shall charge the originating provider for the use of the unbundled elements.

723-39-4.5 If the terminating provider is: (1) interconnected to the originating provider through the purchase of one or more unbundled elements owned by the originating provider or a third provider; or, (2) uses one or more unbundled elements owned by a third provider to terminate the call:

723-39-4.5.1 The terminating provider shall charge the originating provider a termination fee in accordance with this rule, and

723-39-4.5.2 The provider of the unbundled elements shall charge the terminating provider for the use of the unbundled elements.

723-39-4.6 The termination fee, subject to Commission approval, may reflect either: (1) a usage-sensitive charge based on, for example, distance, duration, or time of day; (2) a flat charge based on, for example, capacity port charges reflecting either the trunk group size or the peak-use of interconnecting capacity; or, (3) any combination thereof or alternative mechanism.

723-39-4.7 To the extent Extended Area Service (EAS) agreements in existence on the effective date of these rules, conflict with this rule, the agreements must be modified to conform with the provisions of this Rule 4.

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723-39-4.8 Until either (1) three years after the effective date of these rules or (2) six months after the implementation of a number portability database as contemplated in Rule 5, 4 CCR 723-34 (Rules on Local Number Portability and Administration), whichever ever occurs first, a terminating provider shall recover its costs associated with terminating local traffic through the offsetting of its reciprocal obligations with the originating providers. During this period, terminating and originating providers shall waive mutual recovery.

723-39-4.8.1 The terminating provider's costs associated with the termination of local calls may be recovered, as approved by the Commission, in the rates the terminating provider charges for services provided to its customers.

723-39-4.8.2 If the terminating provider provides the originating provider with dial tone, the terminating provider may charge the originating provider with the use of unbundled local switching for the generation of dial tone when the terminating provider terminates calls from the originating provider on the terminating provider's network.

**RULE 4 CCR 723-39-5. ~~OTHER INTERCOMPANY AGREEMENTS.~~**

723-39-5.1 Telecommunications providers shall deal with other telecommunications providers in a good faith and cooperative manner.

723-39-5.2 All telecommunications providers are obligated to serve their customers in accordance with the Commission's rules.

723-39-5.3 All telecommunications providers shall provide reasonable access to poles, ducts, conduits, and rights-of-way when feasible and when access is necessary for other telecommunications providers to provide service. Upon application by a

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telecommunications provider, the Commission shall determine any matters concerning reasonable access to poles, ducts, conduits, and rights-of-way upon which agreement cannot be reached, including but not limited to, matters regarding valuations, space, and capacity restraints, and compensation for access.

723-39-5.4 Telecommunications providers shall provide interconnecting telecommunications providers with both number and disconnect supervision as well as all available call detail information necessary to enable proper customer billing.

723-39-5.5 Telecommunications providers shall be required to enter into mutual billing and collection agreements so that each telecommunications provider can accept other service provider telephone line number and other nonproprietary calling cards and can bill collect or third party calls to a number served by another provider.

723-39-5.6 Telecommunications providers shall offer the interoperability of nonoptional operator services between networks including, but not limited to, the ability of operators on each network to perform such operator functions as completing collect calls, third party calls, busy line verification calls, and busy line interrupt.

723-39-5.7 Telecommunications providers shall develop mutually agreeable and reciprocal arrangements for the protection of their respective customer proprietary network information.

723-39-5.8 Telecommunications providers shall cooperate in developing and implementing procedures for repair service referrals so that trouble reports are directed to the correct provider or providers.

723-39-5.9 Each telecommunications provider shall offer, in a nondiscriminatory manner pursuant to contract or tariff, the

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necessary operational support to enable other certified telecommunications providers the opportunity to provide their customers quality of service as is available to the telecommunications provider's customers, consistent with 4 CCR 723-2 (Rules Regulating Telecommunications Service Providers and Telephone Utilities). Such contracts or tariffs shall be approved by the Commission and available for review pursuant to Commission order.

723-39-5.10 Telecommunications providers shall make available access to technically reasonable, non-proprietary, as determined by the Commission, signaling protocols used in the routing of local and interexchange traffic, including signaling protocols used in the query of call processing databases such as 800 Database Service, Alternate Billing Service (ABS), and Line Information Data Base (LIDS); and shall make available the signaling resources and information necessary for the routing of local and interexchange traffic.

723-39-5.11 Telecommunications providers shall be prohibited from interfering with the transmission of signaling information between customers and other telecommunications providers in a manner that is injurious to network integrity or that results in fraud. This shall not preclude a telecommunications provider from blocking specific signaling information to the extent required by the end-user's service (e.g., CLASS services).

723-39-5.12 White Pages.

723-39-5.12.1 Each telecommunications provider certified before February 8, 1996 ("White Pages Provider"), shall cause the customer information (i.e. name, address, and telephone number) of all customers within the local calling area served by the provider regardless of whether the customer subscribes to the telecommunications services of that particular provider, to be