

STATE OF COLORADO

PUBLIC UTILITIES COMMISSION

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Christine E. M. Alvarez, Commissioner
Vincent Majkowski, Commissioner
Bruce N. Smith, Director

May 14, 1996

Department of Regulatory Agencies

Joseph E. Gansler
Executive Director



Roy Romer
Governor

Office of the Secretary
Federal Communications Commission
1919 M Street NW
Room 222
Washington, DC 20554

RECEIVED
MAY 15 1996
COMMUNICATIONS SECTION

Dear Sir:

Enclosed please an original plus 16 copies of Colorado's Comments in the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Docket No. 96-98.

In addition to the comments, we are enclosing the following attachments:

Decision Numbers	C96-150	C96-159	C96-161
	C96-292	C96-347	C96-333
	C96-349	C96-351	C96-358
	C96-413	C96-414	C96-448
	C96-449	C96-450	C96-453
	C96-454	C96-461	C96-462
Telecom Rule	4CCR 723-30		

Yours truly,

A handwritten signature in cursive script, appearing to read "Patricia A. Friscic".

Patricia A. Friscic
Administrative Assistant

Enclosures

09/16

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

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MAY 15 1996
FCC MAIL ROOM

IN THE MATTER OF)
)
Implementation of the) **CC Docket No. 96-98**
Local Competition)
Provisions in the)
Telecommunications Act of
1996

**COMMENTS OF
THE COLORADO PUBLIC UTILITIES COMMISSION**

May 14, 1996

SUMMARY

In ¶ 33 of the Federal Communications Commission's (FCC or Commission) Notice of

Proposed Rulemaking (NPRM), the Commission observed:

[T]here may be countervailing concerns that could weigh against rules that significantly explicate in some detail the statutory requirements of sections 251 and 252 of the Telecommunications Act of 1996. Adopting explicit national rules, in certain circumstances, might unduly constrain the ability of states to address unique policy concerns that might exist within their jurisdictions. The case for permitting material variability among the states could be strengthened if there are particular local markets that call for fundamentally different regulatory approaches.

The Colorado Public Utilities Commission (CoPUC) supports the above-stated comment and suggests that the FCC adopt rules which accomplish three things: 1) the establishment of general federal guidelines establishing national telecommunications standards, 2) the placement of responsibility for the details of implementation of the 1996 Act with the States, and 3) the allowance of "material variability among the states" with respect to the issues identified in 1996 Act.

First, the CoPUC supports FCC rules establishing national standards and policies on certain subjects. These may include rules relating to:

- technical standards for interconnection, especially those standards intended to ensure interoperability of carrier networks;
- general specifications of the technically feasible points of interconnection;
- technical standards relating to collocation (*e.g.* the type of equipment which may be collocated);
- general specifications of network elements which must be unbundled; and
- standards and procedures before the Commission relating to the

provisions of § 252 (e)(5) (Commission shall assume responsibility under § 252 if a State Commission fails to act). *See* comments, *infra*, regarding arbitration.

The CoPUC believes that uniform national standards on the above-listed subjects are appropriate, and will promote competition in the local exchange market without adversely affecting the availability and affordability of local service (*i.e.* universal service).

Second, the CoPUC finds numerous items within the 1996 Act which clearly places responsibility for the details of the implementation of the 1996 Act with the States. In particular, the pricing and ratemaking determinations are appropriately left to the States, inasmuch as these decisions will critically affect State and local concerns, including the rates for local service. We do not subscribe to the contention of many industry players that the entire cost of the loop should be recovered by the subscriber's basic service rates. Hence, it is our opinion that the current system of common line cost recovery should not be altered at this time. Any form of separations changes should not occur in this rulemaking.

Third, the CoPUC supports "material variability among the States" in their implementation approaches. Competition in the telecommunications industry is critical new ground for our nation and one in which the experience, expertise and creativity in the various States will likely lead to the best possible implementation of the goals of the 1996 Act. Each has unique geographic and demographic characteristics for which comprehensive national policies may not appropriately account. To suggest that the FCC or any single authority can reach the best possible solution for such a broad range of important issues is ignoring the wealth of the solutions available to our nation.

INTRODUCTION

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1. The Colorado Public Utilities Commission (CoPUC or Colorado Commission) respectfully submits these comments before the Federal Communications Commission (FCC or Commission) regarding the FCC's Notice of Proposed Rulemaking (NPRM) relating to the implementation of local competition.

2. In May 1995, the Colorado Legislature enacted legislation¹ known as House Bill 95-1335 (HB 1335) requiring the development of rules to implement local competition in the State of Colorado no later than July 1, 1996. HB 1335 specified that proposed rules were to be developed by a Telecommunications Working Group made up of representatives from the State, industry and consumer groups². The statute mandated that the Working Group "negotiate and attempt to resolve issues of contention among affected parties in connection with rule-making by the Commission."³ In compliance, the Working Group met virtually every day between June and December 1995, using several subgroups to focus on particular issues. As a result, the Working Group presented a preliminary report to the CoPUC in October 1995, a final report

¹ House Bill 95-1335 was enacted by the Colorado General Assembly on May 24, 1995.

² The Telecommunications Working Group was composed of representatives from the CoPUC Staff, the Colorado Office of Consumer Counsel, U S WEST Communications, Inc., MCI Telecommunications, Inc., AT&T Communications, Inc., Colorado Rural Development Council, Governor's Office, Colorado Independent Telephone Association, ICG Access, Telecommunications, Inc., Qwest Communications Corporation, AT&T Wireless, legislative staff, Colorado Payphone Association, and the Colorado Municipal League.

³ § 40-15-504(1), C.R.S.

in November 1995 and a supplemental report in December 1995. These reports contained proposed rules for: a) local number portability, b) emergency services (9-1-1), c) certification of new providers and price regulation of local exchange providers, d) interconnection, unbundling, and termination of local traffic, e) resale, and f) Colorado's High Cost Fund. Where consensus was reached among the parties, it was so noted. Where parties disagreed on issues, their various positions were presented. Comments and reply comments to these proposed rules were filed during January 1996 and hearings began the same month. On February 8, during the rulemaking hearings, the Telecommunications Act of 1996 (1996 Act)⁴ was signed into law. Parties were given an opportunity to file supplemental comments and reply comments to address the provisions in the 1996 Act. The CoPUC issued its decisions on the various rules from early February to April 1, 1996. We are currently in the final reconsideration period on these rules.⁵ Many of the same issues addressed by the FCC in its Interconnection NPRM have been addressed locally in Colorado and the results of those discussions are included in these comments.

3. The CoPUC understands that an overarching goal of the FCC is to establish a national policy framework that will further the goals expressed in the 1996 Act. Colorado agrees with that goal insofar as it: a) does not impede the necessity to encourage effective competition in Colorado, b) maintains an adequate level of service availability at reasonable prices (especially in Colorado rural areas), c) maintains acceptable service quality standards, and

⁴ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat 56.

⁵ Attached are copies of the CoPUC decisions in rulemaking dockets 95R-553T, 95R-554T, 95R-555T, 95R-556T, 95R-557T, 95R-558T, 95R-608, 95R-609T, 95R-610.

d) does not contravene Colorado statute that is not inconsistent with the 1996 Act.

4. In these comments, the CoPUC makes suggestions based upon our experience in establishing competition in the local exchange (the HB 1335 process) and our experience as a predominantly rural state that has little resemblance in geography, topography, and demographics to the densely populated states in the eastern half of the United States. Our comments will follow in the same basic order of the outline in the NPRM. References to specific paragraphs in the NPRM will be noted within that outline.

5. Geographically, Colorado is the eighth largest state in the nation. It consists of 104,247 square miles and has a population of over 3.65 million people. The majority of Colorado's population is concentrated in a number of cities on the eastern slope of the Rocky Mountains. Thus, Colorado is a primarily a rural state.

6. The 2.3 million Colorado telephone subscribers are served by 28 local exchange companies (LECs).⁶ The largest incumbent LEC in Colorado is U S West Communications (USWC) which serves approximately 2.23 million access lines. The second largest, Pacific Telecommunications, Inc. (PTI Communications) serves approximately 65,000 lines. The other

⁶Agate Mutual Telephone Cooperative Asso.; Big Sandy Telecommunications, Inc.; Bijou Telephone Cooperative Asso.; Blanca Telephone Co.; Columbine Telephone Co.; Delta County Tele-Comm., Inc.; Eagle Telecommunications, Inc. (doing business as PTI Communications); Eastern Slope Rural Telephone Asso., Inc.; El Paso County Telephone Co.; Farmers Telephone Co., Inc.; Haxtun Telephone Co.; Nucla-Naturita Telephone Co.; Nunn Telephone Co.; Peetz Cooperative Telephone Co.; Phillips County Telephone Co.; Pine Drive Telephone Co. (Jed Enterprises, Inc.); Plains Cooperative Telephone Asso., Inc.; Rico Telephone Co.; Roggen Telephone Cooperative Co.; Rye Telephone Co.; Stoneham Cooperative Telephone Corp.; Strasburg Telephone Co.; Sunflower Telephone Co., Inc.; Union Telephone Co.; Universal Telephone Co. of Colorado; U S West Communications, Inc.; Wiggins Telephone Asso.; and Willard Telephone Co..

26 LECs serve a total of approximately 12,000 lines. The smallest LEC in Colorado is Willard, which serves 58 telephone lines.

7. The LECs in Colorado also exhibit considerable variation in the number of lines served per square mile. Agate Mutual's customer base is spread over such an expanse that the average telephone lines served per square mile is 0.4. While USWC serves the major cities in Colorado with telephone customer densities of up to 1,115 access lines per square mile, it also serves rural exchanges that have access line densities of two lines per square mile.

8. The average gross cost per access line therefore ranges from approximately \$900 to \$8,000 per access line.

II. PROVISIONS OF SECTION 251

A. Scope of the Commission's Regulations.

9. *[NPRM ¶¶ 14-24, 157] What Is the States' Authority Under the 1996 Act?*

The 1996 Act established new responsibilities and obligations for both state and federal authorities with respect to the regulation of telecommunications carriers. The CoPUC suggests that Congress, in the 1996 Act, intended to assign substantial independent authority to the States in their implementation of its provisions. As such, the CoPUC suggests that the FCC adopt rules which properly reflect State prerogative under the 1996 Act.

10. *[NPRM ¶¶ 14-24] Section 251 Provisions:* We begin by noting our general agreement with the Commission's description of the 1996 Act in ¶¶ 14-24. We would, however, emphasize certain provisions in the Act relating to the role of the States in its

implementation. Section 251, as observed in the NPRM, establishes the interconnection and unbundling obligations of telecommunications carriers generally. While the Commission is directed to "establish regulations to implement the requirements"⁷ of § 251, Congress directed that⁸:

In prescribing and enforcing regulations to implement the requirements of this section, the Commission shall not preclude the enforcement of any regulation, order, or policy of a State commission that--

- (A) establishes access and interconnection obligations of local exchange carriers;
- (B) is consistent with the requirements of this section; and
- (C) does not substantially prevent implementation of the requirements of this section and the purposes of this part.

The CoPUC interprets subsection A, above, as permitting the States to adopt interconnection and unbundling⁹ rules. In addition to whatever interconnection and unbundling regulations may be adopted by the Commission, States are empowered to apply their own interconnection and unbundling requirements to LECs.¹⁰

11. Subsection 251(d)(3)(B) provides that State regulations must be "consistent with" the directives contained in § 251. We submit that this term simply requires that State

⁷ Section 251(d)(1).

⁸ Section 251(d)(3).

⁹ Section 251(d)(3)(A) refers to State regulations establishing "access" obligations. In light of the provisions of §§ 251(c)(3) and 251(d)(2), it is apparent that "access" refers to carrier access to unbundled network elements.

¹⁰ This interpretation is consistent with the directives set forth in § 261(b) (Act shall not be construed to prohibit any State commission from enforcing regulations prescribed prior to the Act, or from prescribing regulations after the date of enactment, if such regulations are not inconsistent with the Act).

interconnection and unbundling regulations promote the broader purposes of the 1996 Act, not that States are compelled to follow the *identical* policies adopted by the Commission. [See *Channel Master Satellite v. JFD Electronics Corp.*, 748 F.Supp. 373, 383 (E.D.N.C.1990)]. Moreover, subsection 251(d)(3)(C) proscribes only those State rules which "*substantially*" (emphasis added) prevent implementation of the requirements of § 251 and the purpose of the 1996 Act. In our view, subsection 251(d)(3) essentially contemplates preemption of State activity or State rules, only in instances where the purposes of the 1996 Act are significantly impeded.¹¹ Hence, States are not precluded from imposing additional or different interconnection and unbundling requirements and policies upon telecommunications carriers from the Commission.¹² The express authority of States to adopt their own interconnection and unbundling regulations under the Act should significantly influence the type of rules to be adopted by the Commission.¹³

¹¹ The CoPUC agrees with the Commission's characterization of the intent of the Act as being to promote competition and advance the goal of universal service.

¹² Legal interpretations aside, we submit that simply as a matter of prudent public policy the Commission should be circumspect in selecting those principles which will be fixed as one-size-fits-all standards for each of the fifty States. Generally, we agree that some matters (*e.g.* technical standards for interconnection, specification of network elements which must be unbundled) are appropriately established as national standards. However, other subjects (*e.g.* pricing and ratemaking principles) are best left to State regulation, inasmuch as universally-applicable standards cannot account for the distinct circumstances and needs of all States and their citizens.

¹³ Section 251 contains other significant provisions relating to State responsibility under the Act. Notably, a rural telephone company is initially exempted from the requirements imposed by § 251(c) on other incumbent LECs. See § 251(f). This exemption is to continue until such a company receives a bona fide request for interconnection or unbundled network elements. In the event of such a request, the responsibility for determining whether the request is unduly economically burdensome, technically feasible, and consistent with considerations of universal service (§ 254) is upon the State commission.

12. *Section 252 Provisions.* Section 252, in general, sets forth the procedures for telecommunications carriers to negotiate the terms of interconnection and unbundling agreements. The States retain substantial, indeed primary, responsibility for implementing the directives in § 252. For example, § 252 instructs the State commissions to mediate¹⁴ and arbitrate¹⁵ disputes between carriers arising in the course of negotiations for interconnection or unbundling. With respect to agreements subject to arbitration, § 252(c), in part, charges the State commission with ensuring that such agreements establish just and reasonable rates for interconnection and unbundled network elements, and comply with the requirements of § 251 and Commission regulations prescribed pursuant to § 251.

13. Moreover, § 252(e) mandates that all interconnection agreements, whether adopted by negotiation or arbitration, be submitted to the State commission for approval. Pursuant to § 252(2), the State commission may reject a negotiated agreement if it finds that the agreement discriminates against other carriers, or is not consistent with the public interest, convenience, and necessity. Arbitrated agreements may be rejected by the State commission if it is determined that the agreement does not meet the requirements of § 251, including the regulations prescribed by the Commission, or the pricing standards set forth in § 252(d).

14. Section 252(d) sets forth the pricing standards *which a State commission* must apply in its determinations of the just and reasonable rates for the interconnection of facilities and for unbundled network elements. We emphasize that § 252(d)(1) assigns responsibility for determining whether prices for interconnection and unbundled network elements are just and

¹⁴ 47 U.S.C. 252(a)(2).

¹⁵ 47 U.S.C. 252(b).

reasonable to State commissions. Similarly, § 252(d)(2) charges a State commission with determining whether rates for the transport and termination of local traffic are just and reasonable. Section 252(d)(3) commands that State commissions decide upon wholesale prices for telecommunications services. These pricing provisions in the 1996 Act are noticeably silent in delegating any role to the Commission in determining the just and reasonableness of rates. Instead, these provisions expressly assign ratemaking authority to the States with respect to the provision of interconnection services, unbundled network elements, and the transport and termination of local traffic. This assignment of ratemaking responsibility is highly consistent with Congress' intent that State commissions hold the primary role in reviewing and approving interconnection and unbundling agreements.¹⁶

15. Lastly, the CoPUC emphasizes that review of State commission decisions on interconnection and unbundling agreements lies *with the Federal district courts*, not the Commission.¹⁷ The Commission is empowered to review agreements between carriers only in instances where a State commission fails to carry out its responsibilities under the 1996 Act.¹⁸ This provision is significant. In particular, this procedure means that to the extent administrative expertise is to be applied to the review of specific interconnection and unbundling agreements, assuming State commissions carry out their responsibilities under the Act, *it will*

¹⁶ It is also noteworthy that review of the Bell Operating Company's statement of generally available terms and conditions is reviewable by the State commission. See § 252(f).

¹⁷ Section 252(e)(6), in part, provides that, "In any case in which a State commission makes a determination under this section, any party aggrieved by such determination may bring an action in an appropriate Federal district court to determine whether the agreement or statement meets the requirements of section 251 and this section."

¹⁸ Section 252(e)(5).

be State agency expertise. We assume that the Federal courts will accord substantial deference to administrative agency determinations regarding the propriety, justness, and reasonableness of interconnection and unbundling agreements.¹⁹ Assuming this to be the case, on judicial review the federal courts should accord deference to the determinations and the exercise of agency discretion by State commissions.

16. Since State commissions will be the expert agencies ruling upon the acceptability of carrier agreements--the 1996 Act does not provide for Commission review of State agency decisions--the Commission should adopt a regulatory scheme which leaves much of the detail to the States. The CoPUC suggests that State commissions, when implementing the Act through review of specific carrier agreements, will best be able to fulfill their prescribed role when they retain substantial responsibility and flexibility in setting interconnection and unbundling policies. We also submit that it is counter-intuitive to assume that the 1996 Act intends that the Commission adopt a comprehensive regulatory program, to the exclusion of State policies, when the Commission itself is not empowered to enforce that program through the review (either through original review or on appeal of State commission decisions) of individual interconnection and unbundling agreements. In short, the legislative scheme for implementing the Act suggests that the States retain significant and independent responsibility in its implementation.

17. On the other hand, the Commission should not attempt to prescribe pricing and ratemaking principles for interconnection and unbundled network elements. We emphasize that,

¹⁹ The Act does not prescribe the precise standard of judicial review of State commission decisions on specific agreements. However, traditional administrative law principles, as stated in 5 U.S.C.A. § 706 (1995), suggests that reviewing courts should apply an arbitrary and capricious standard.

as indicated in the above discussion, the Act expressly assigns *to State commissions* the responsibility for determining the justness and reasonableness of rates for: interconnection and unbundled network elements²⁰, the transport and termination of local traffic²¹, and the wholesale prices for telecommunications services²²

18. As authority for adopting pricing rules, the Commission apparently relies on its obligation to adopt rules to implement § 251²³, in conjunction with the provisions of §§ 251(b)(5), 251(c)(2), 251(c)(3), 251(c)(4), and 251(c)(6). (See discussion in ¶¶ 117-20 of NPRM.) These latter provisions, for purposes of the present discussion, simply state that incumbent carriers' charges for interconnection, unbundled network elements, resale of telecommunications services, and collocation must be just, reasonable, and nondiscriminatory. These provisions do not specifically delegate to the Commission pricing or ratemaking power. Moreover, the rulemaking authority given to the Commission in § 251(d) is general. We suggest that the general grant of authority in that section must be reconciled with the specific provisions of §§ 252(d) which expressly grant pricing and ratemaking responsibilities to the States. The manner in which these provisions should be reconciled is to leave pricing and ratemaking decisions to the State commissions.

19. We note that even general pricing or costing policies (*e.g.* a requirement that rates be based upon TSLRIC) will substantially interfere with the authority of States to set rates and

²⁰ Section 252(d)(1).

²¹ Section 252(d)(2).

²² Section 252(d)(3).

²³ Section 251(d).

charges for intrastate services, including local service.²⁴ For example, Commission costing or pricing rules on interconnection, unbundling, termination of local traffic, collocation, or resale will, in effect, set major components of cost-of-service for carriers providing local service products. In setting retail rates for local service, State commissions will likely be required to allow for rate recovery of those costs-of-service, in effect, established by the Commission in its rules. We further note that Commission pricing or costing policies for incumbents will also directly affect local service rates inasmuch as the facilities and investment used for interconnection and unbundling are also used for intrastate services. Undoubtedly, incumbents will attempt to recover those costs not recouped in rates for interconnection and unbundling in rates for intrastate services. These effects on intrastate rates and services, we contend, are inconsistent with State prerogative under the Act.

B. Obligations Imposed by Section 251(c) on “Incumbent LECs”

20. *[NPRM ¶ 44] Should the FCC establish, at this time, standards and procedures by which carriers or other interested parties could seek to demonstrate that a particular LEC should be treated as an incumbent LEC pursuant to Section 251(h)(2)?* First, upon review of many of the “additional requirements” that were placed upon the incumbents, the CoPUC determined that many of these additional requirements were also reasonable requirements of the new entrants. However, upon the testimony of various new entrants in the hearings prior to the adopting rules in Colorado for interconnection, the CoPUC determined that it would be

²⁴ The Commission apparently recognizes (¶ 39 of NPRM) that, even under the Act, its authority over intrastate service rates (*e.g.* local service rates) is circumscribed pursuant to the provisions of 47 U.S.C. § 152(b).

appropriate to allow a three-year period, from the time a new entrant was granted its certificate of public convenience and necessity to enter the local exchange market, that the new entrant would automatically be exempt from certain of the rules applicable only to the incumbent local exchange providers.

21. Even though the CoPUC intends to examine whether or not a new entrant should be treated as an incumbent after three years, such a reclassification is not automatic. Under Colorado's recently adopted rules, at the end of the three-year period, a new entrant will be required to demonstrate to the CoPUC that an exemption from Colorado's Rules is still required to foster competition and that the CoPUC should extend the exemption for an additional period. The review of each new entrant will be on a case-by-case basis.

22. *[NPRM ¶ 45] Should state commissions be permitted to impose, on carriers that have not been designated as incumbent LECs, any of the obligations the statutes imposes on the incumbent LECs?* CoPUC determined, in the course of its interconnection rulemaking, that asymmetrical application of certain of its interconnection and unbundling rules would not promote the public interest, would serve to limit customer choices and would serve to hinder competition in Colorado. For example, Colorado has a number of high-rise office buildings, industrial parks, apartments and condominium complexes where the owners of the buildings or complexes provide telephone service to its tenants under a shared tenant arrangement. Under the current shared tenant arrangement, the owner of the complex is allowed to own and operate its own telephone equipment, interconnect to the local exchange company and resell toll services of other interexchange carriers such as AT&T or MCI to the tenants of its buildings. In essence, the shared tenant provider acts as a miniature telephone company operating within the

franchised area of the incumbent local telephone company.

23. While these shared tenant providers in Colorado are not currently certified as telephone public utilities, they act as the sole provider of telephone service to the tenants within their buildings or complexes. The tenants may subscribe to telephone services of the local exchange company only through the use of facilities that the shared tenant provider leases back to the telephone company.

24. It is the intention of the CoPUC to investigate whether providers, such as shared tenant providers, will become certified as local exchange providers and the present shared tenant service arrangement will disappear. As such, the shared tenant providers will become new entrants in terms of the provision of local exchange service within Colorado. If the CoPUC were to exempt the present shared tenant providers from Colorado's rules for unbundling, interconnection and collocation, the choice of telephone services for tenants of these building or complexes could be limited to only those services offered by the shared tenant provider. Furthermore, the incumbent telephone company, while required to interconnect with the shared tenant provider, could find itself precluded from being able to effectively offer services to customers in an area over which it once had an exclusive grant or monopoly to provide telephone service.

25. The CoPUC has observed that a number of new entrants are poised to enter the local exchange market using resale provisions, as well as providing their own facilities. Whereas the 1996 Act specifies a number of additional obligations for the incumbent local exchange carriers, including interconnection at every technically feasible point within the carrier's network, the 1996 Act is silent with respect to interconnections between new entrants.

If a new entrant provides local loops in the same fashion as the incumbent LEC and local loop interconnection is technically feasible for the incumbent, then is it not technically feasible for the new entrant to provide loop interconnection in the same fashion as the incumbent? To the extent that facility-based new entrants provide networks in a fashion similar to that of the incumbent, the requirement for symmetrical interconnection arrangements for both new entrants and incumbents, is logical and promotes the public interest.

26. Symmetrical application of the collocation requirements to both incumbents and new entrants also serves the public interest better than an asymmetrical application. For example, if there were no requirement for a shared tenant provider to provide physical or virtual collocation of the incumbent's or other new entrant's facilities at its premises, then it could result in the ability of the shared tenant provider to limit the services that can be provided to tenants of its building or complex. It is the CoPUC's opinion that the 1996 Act intended to open telecommunications to multiple providers and not create new networks that restrict entry to other new entrants or the incumbent. Therefore, symmetrical application of the collocation requirement serves the public interest.

27. Section 251(c)(2)(C) of the 1996 Act requires that the incumbent provide interconnection in a manner that is at least equal in quality to that which it provides to itself, or to any subsidiary, affiliate or other party to which the carrier provides interconnection. If the CoPUC or the FCC were to allow new entrants to provide degraded facility connections to each other or to an incumbent, this will result in the overall degradation of the entire network that clearly is not in the public interest. This same section also mandates that the incumbents provide interconnection on rates, terms and conditions that are just, reasonable, and nondiscriminatory,

in accordance with the terms and conditions of the agreement and the requirements with Section 251 and 252. This requirement is also reasonable for the interconnections between new entrants, as well as between the new entrant and the incumbent LECs.

28. However there are some additional requirements that Section 251(c) places on the incumbent LECs that may not be necessary to place on the new entrants. Except for the instances where a new entrant may possess a virtual monopoly, such as shared tenant providers, asymmetrical application of the unbundling requirements for the incumbent versus the new entrants may promote competition in the provision of local exchange service better than a pure symmetrical application of the unbundling requirements set forth in Section 251(c)(3). For example, assume a new entrant desires to initially bundle local exchange service with a video offering. To require the new entrant to unbundle its facilities into sub-elements that could immediately be purchased by others is perceived to be a potential barrier to entry by some new entrants.

29. Therefore, the CoPUC recommends that the FCC review each of the elements listed in the additional obligations of the incumbent LECs, Section 251(c) and ask if such requirement should be applied to the interconnection arrangements between new entrants and between the new entrant and the incumbent LECs.

2. Interconnection, Collocation, and Unbundled Elements

a. Interconnection

30. *[NPRM ¶ 51] What are the consequences of not establishing specific rules for interconnection and thereby allowing states to experiment with different approaches? The*

1996 Act mandates that each telecommunications carrier has the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers. Rather than define specific interconnection requirements, the CoPUC recommends that the FCC develop some very general guidelines. For example, these guidelines should: a) specify a national standard for signaling protocols, b) establish signal levels at various points in the network, and c) develop loss and noise characteristics on the lines. Each of the individual states, therefore, should mandate interconnection in a manner that meets the unique local requirements of each state.

31. The CoPUC believes that interconnection between competing local exchange providers should be determined on a case-by-case basis because "technically feasible" points are possible in a number of locations. For example, a provider such as AT&T may have digital facilities that are capable of interconnecting directly to the USWC local tandem switch at a DS1 level. Assuming that the clocks of the two switches, AT&T's and USWC's, are synchronized, such an interconnection of the switches may be accomplished without the use of multiplex/demultiplex equipment on either end of the trunk connections. However, another local exchange provider, that does not have its clocks synchronized to the USWC clock, may have to employ the use of multiplex/de-multiplex equipment at the USWC tandem to interconnect its network to that of USWC for the purpose of terminating local traffic to USWC. USWC also presently interconnects with one or more independents in the "air". That is, USWC owns one end of a microwave system, the independent telephone company owns the other end. The "meet point" between these microwave systems is somewhere in the air. USWC has its meet point with some of the independents in this State actually in the end office of the independent

telephone company.

32. The CoPUC has already received inquiries from companies that may potentially provide only a portion of the loop plant that would be used to interconnect an end-user to the telephone network of a major telecommunications provider such as USWC. This type of alternative loop provider requires the ability to interconnect its loop plant into the loop feeder or loop distribution plant at some cross-connect point of the facilities of the LEC. Such an interconnection may be physical copper to copper connection at some splice point or pedestal of the telephone company. If the CoPUC or the FCC were to limit interconnection to trunk-side only, at or near the local switch of the incumbent telephone company, potential loop plant providers would be precluded from offering service. In Colorado, we have end-users who have been waiting for months and even years to obtain service because of USWC's inability to provide local loop plant in a timely manner. Colorado also still has a number of geographic areas that are not served by any telephone company. Provision of service to these areas may require some unique interconnection arrangements.

33. USWC has what it calls Farmer Line or Service Station service. In the case of this type of service, USWC will build its local loop plant out to a point in the rural area. The rural subscriber will built its facilities up to this same point and interconnect into the network at some splice point or pedestal of USWC. In the case where USWC has permitted the installation of another carrier's equipment in the premises of USWC, USWC will interconnect inside its own building to the network of another provider.

34. In general, the CoPUC believes that considerably variability needs to exist in the specifications for interconnection. As networks develop and mature, standards may be

developed for most of the general cases.

(1) Technically Feasible Points of Interconnection

35. *[NPRM ¶ 56] What constitutes a “technically feasible point” within the incumbent LEC’s network?* In discussing the examples of various interconnection arrangements listed above, we have listed only a few of the present interconnection arrangements. It would be impractical to list each and every point where possible combination of interconnection arrangements. Wherever and however an incumbent telecommunications carrier interconnects its facilities together, it is technically feasible to interconnect another provider that is using same type of facilities. Therefore, Colorado adopted a requirement that all telecommunications providers shall interconnect at every technically feasible point.

36. Any potential list of technically feasible points of interconnection that the FCC may desire to list should be categorized as examples only. Any national policy on interconnection and technically feasible points (of interconnection by incumbents to new entrants) should be broad in scope in order to maximize the benefits to consumers where unique circumstances may require unique solutions and may preclude numerous types of interconnection that are employed today.

37. *[NPRM ¶ 57] If an incumbent LEC currently provides interconnection to any other carrier at a particular point in its network, or has provided such interconnection in the past, should the FCC consider that point of interconnection “technically feasible” within the meaning of section 251(c)(2)? Should this be identified in any minimum federal interconnections standards developed by the FCC? Should all incumbent LECs that employ*

similar network technology be required to make interconnection at such points available to requesting carriers? This approach may be appropriate for “historical” types of interconnection. However, the technology employed in telecommunications is rapidly changing. Historical interconnections, such as farmer lines, represent historical interconnection practices. Forward-looking requirements should be more general. Furthermore, the FCC’s tentative conclusion does not address the requirement for new entrant telecommunication providers to interconnect with each other and the new ways in which the incumbent telecommunications providers interconnects its own network together. Specifically, the FCC has overlooked numerous existing interconnection arrangements that incumbents employ to interconnect their own network.

38. *[NPRM ¶ 58] Should each state be allowed to determine whether interconnection at a greater number of points may be technically feasible?* The CoPUC supports this conclusion by the FCC. We presently require by rule that all telecommunications providers, not just incumbents, interconnect with each other at any technically feasible point. It is the CoPUC’s view that it is the obligation of any telecommunications provider opposing interconnection to demonstrate to the CoPUC that a point of interconnection is not technically feasible.

(2) **Just, Reasonable, and Nondiscriminatory Interconnection**

39. *[NPRM ¶ 61] How should the FCC adopt national standards for the terms and conditions of interconnection? Should it adopt uniform national guidelines governing installation, maintenance, and repair of the incumbent LEC’s portion of interconnection*

facilities? (emphasis added). Again, it is the CoPUC's opinion that any guidelines be applied to both the new entrant providers and the incumbent telecommunications carriers. The suggestion that the new entrant providers should be subject to lesser requirements for maintenance of their facilities could jeopardize the health, welfare and safety of the telephone subscribers connected to the new entrants' facilities. Consider the 9-1-1 facilities that a new entrant local exchange provider will employ to interconnect to the 9-1-1 provider in Colorado. 9-1-1 facilities of any new entrant telecommunications provider should be provisioned, maintained and repaired in the same manner as the facilities of the incumbent local exchange provider.

40. *[NPRM ¶ 62] Should the FCC require that each company pay for and be responsible for building and maintaining its own facilities up to the meet point?* The CoPUC supports this concept with some modification. The 1996 Act requires that each telecommunications carrier has a duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers. In addition, section 251(c)(2) states that the incumbent has a duty to provide for the facilities and equipment of any requesting telecommunications carrier seeking interconnection with the incumbent's local exchange network. First, a facilities-based new entrant telecommunications provider has a duty to interconnect directly or directly with the incumbent telecommunications provider and the incumbent with the new entrant. Therefore, both companies must agree on a method or a meet point to directly interconnect the two networks together. If construction of facilities were required between both. Then each provider would be required to build, lease, or in some other fashion obtain facilities to the meet point. The CoPUC interprets section 251(c)(2) as requiring the incumbent, upon

request of the new entrant, to provide the facilities and equipment from the meet point to the new entrant, rather than the new entrant providing such equipment or facilities itself. The CoPUC intends to use its present Costing and Pricing Rules²⁵ to determine the appropriate costs and rates for the facilities and equipment furnished by the telecommunications providers.

(3) Interconnection that is Equal in Quality

41. *[NPRM ¶ 63] What criteria may be appropriate in determining whether interconnection is "equal in quality"? Should these criteria be adopted as a national standard or should variation and experimentation be allowed among the states?* Colorado requires that all telecommunications providers furnish interconnection facilities to other telecommunications providers in a manner that is equal in quality to that which it provides to itself or to any subsidiary, affiliate, or any other party to which the provider interconnects. A national standard is not preferable because of the material variability in the configuration of the networks in the various states.

(4) Relationship Between Interconnection and Other Obligations Under the 1996 Act

b. Collocation

42. *[NPRM ¶ 68] Should the FCC adopt national standards, where appropriate, to implement the collocation requirements of the 1996 Act? To what extent should the FCC allow for some variation among states in establishing rules for collocation? What are the advantages and disadvantages of permitting such variation?* It is the CoPUC's recommendation

²⁵ Attached in Docket No. 92M-039T/92R-596T.