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May 15, 1996

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

Re: In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996
FCC 96-182; CC Docket No. 96-98

DOCKET FILE COPY ORIGINAL

Dear Secretary:

Pursuant to C.F.R. Sections 1.415 and 1.419, enclosed is the original and 18 copies of Comments of the Washington Utilities and Transportation Commission (including two copies marked "Extra Public Copy") regarding the above referenced matter.

Very truly yours,

JEFFREY D. GOLTZ
Senior Assistant Attorney General

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Enclosures

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Before the
Federal Communications Commission
Washington, D.C. 20554

FCC 96-182

In the Matter of	)	
	)	
Implementation of the Local Competition	)	CC Docket No. 96-98
Provisions in the Telecommunications Act	)	
of 1996	)	
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COMMENTS

OF

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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I. INTRODUCTION AND SUMMARY

The Washington Utilities and Transportation Commission (Washington UTC) submits the following comments in response to the Federal Communications Commission's (FCC) Notice of Proposed Rulemaking (NPRM) on Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (issued April 19, 1996).

The Washington UTC appreciates the consideration and frequent references in the NPRM to the work that our state and others have already done in sorting through the maze of competitive issues. The scope and level of detail in the NPRM is testament to the complexity of these issues. If competition is to develop with a minimum of regulatory impediment, it is essential that informed decisions made by the states, consistent with the federal Act,[1] be allowed to go forward and that carriers be prevented from using the FCC or this proceeding as a way to forestall the exhaustive efforts by state commissions to establish the conditions essential for competition.

Specifically, the Washington UTC does not wish to see this NPRM used to relitigate issues that have already been resolved. Already, one incumbent LEC has used the adoption of the federal Act and this rulemaking as an excuse to return to positions resoundingly rejected by the Washington UTC. As the NPRM has noted, incumbent LECs have vastly superior bargaining power; allowing them to hold

[1] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 ("federal Act" or "1996 Act").

steadfastly to positions already rejected after extensive state review does nothing to correct that imbalance of power.

Generally, the Washington UTC believes there is merit and value in federal rules that outline a minimum set of criteria or establish a set of "preferred outcomes" which narrow the range of conflict and encourage good faith negotiations on interconnection. These rules should support, not preempt, state interconnection policies and orders, and should allow for states to go beyond federal thresholds. In regard to pricing, the Washington UTC supports pricing guidelines, if set appropriately; but intrastate rates should remain the jurisdiction of the states.

Our comments will begin by providing a brief description of the key decisions the Washington UTC has made regarding interconnection and other competitive issues. We then provide the Washington UTC legal analysis regarding the interplay between federal and state regulations. Following the legal analysis, we offer comments specific to the NPRM numbered paragraphs.

II. COMMENTS

A. <u>Washington State's Interconnection Rules.</u>

The Washington UTC has pursued an interconnection strategy of leaving negotiation of interconnection arrangements up to the carriers. When parties have not been able to agree, as was the case last year when the Washington UTC undertook an extensive proceeding to address interconnection tariffs and discrimination complaints, the Washington UTC decided the more contentious issues but still left considerable room for individual negotiations. As such, the Commission's actions, both before and after passage of the federal Telecommunications Act of 1996, are consistent with the federal law's emphasis on negotiated interconnection agreements. We believe our decision can provide guidance to this specific rulemaking. Below are the key interconnection-related findings of the Washington UTC (Docket No. UT-941464, Fourth Supplemental Order, attached as Appendix "A").

> Mutual traffic exchange, also known as "bill and keep", is compensatory because each company exchanging traffic receives something of value. While bill and keep may not be appropriate for all interconnection arrangements in the long term, the Washington UTC found that incumbent LECs will not be financially harmed by the adoption of bill and keep for an interim period of time until a more appropriate, cost-based interconnection arrangement can be agreed upon.
>
> Call termination costs and other interconnection costs are primarily a function of the capacity required to meet peak demands and are not consistent with a usage-based pricing system. Compensation based on minutes of use is likely to discriminate against certain groups of customers, distort incentives to enter the competitive market, discourage economic efficiency in the design of networks and prove unsustainable under competition.
>
> If parties cannot negotiate mutually acceptable compensation arrangements, the Washington UTC indicated its preferred outcome is a capacity charge, that is cost-based and supported by reasonable TSLRIC studies, rather than a usage-based charge.
>
> The Washington UTC determined that companies should interconnect at mutually agreed upon meet points with each company responsible for building and maintaining its own facilities up to that meet point.
>
> Number portability is an essential condition for effective local exchange competition. Interim number portability options, such as call forwarding, have serious drawbacks and are only stopgap measures which should be made available to other local carriers at incremental cost. The

Commission's order explicitly linked the transition away from bill and keep to the implementation of true local number portability and the removal of other competitive barriers.

B. The Proper Scope of the FCC's Regulations (NPRM ¶¶ 25-41).

1. Whether the FCC Adopts Rigid or Flexible Standards, They Would Not Apply to Intrastate Arrangements (NPRM ¶¶ 37-40).

In paragraph 37, the FCC tentatively concludes that "Congress intended sections 251 and 252 to apply to both interstate and intrastate aspects of interconnection, service, and network elements, and thus that our regulations implementing these provisions apply to both aspects as well." In paragraph 39, the FCC tentatively concludes that "[i]n enacting section 251 after section 2(b)[[2]] and squarely addressing therein the issues before us, we believe Congress intended for section 251 to take precedence over any contrary implications based on section 2(b)."

We disagree with this tentative conclusion. The United States Supreme Court has found section 2(b) to contain "express jurisdictional limitations on FCC power . . . . By its terms, this provision fences off from FCC reach or regulation intrastate matters indeed, including matters 'in connection with' intrastate service." Louisiana Pub. Serv. Comm'n v. FCC, 476 U.S. 355, 370, 106 S. Ct. 1890, 90 L. Ed. 2d 369 (1986). There is nothing in the discussion in paragraphs

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[2] Section 2(b) of the Communications Act of 1934, codified at 47 U.S.C. § 152(b).

37 through 40 that would supersede the express separation of intrastate and interstate regulation contained in section 2(b).

That section itself expressly contains exceptions to its scope for specific sections of Title 47. The FCC in its NPRM noted that neither section 251 nor section 252 are among the sections mentioned as exceptions to the scope of the section 2(b) prohibition on FCC involvement in intrastate affairs. Where Congress has expressly provided exceptions to the state-federal separation called for by section 2(b), it would be inappropriate to find an implied exception to the reach of the statute.[3] This is particularly true in this case because in another section of the 1996 Act, Congress included a rule of construction that nothing in the Act shall be construed "to modify, impair, or supersede Federal, State, or local law unless expressly provided in such Act or amendments." 47 U.S.C. § 601(c)(1).

The FCC is without power to take action purporting to effect congressional intent when an examination of the authority granted by Congress to the FCC reveals no congressional intent that regulations of the FCC displace state laws. As the Court stated in Louisiana Pub. Serv. Comm'n, at 372:

[3] Significantly, prior versions of the 1996 Act included express exemptions from section 152(b) for these areas. See, e.g., House Report, S. 652, § 101(c)(2) (original version). The exemptions were removed from the final legislation.

> Section 152(b) constitutes, as we have explained above, a congressional <u>denial</u> of power to the FCC to require state commissions to follow FCC depreciation practices for intrastate ratemaking purposes. Thus, we simply cannot accept an argument that the FCC may nevertheless take action which it thinks will best effectuate a federal policy.

Likewise, here, the FCC under section 2(b) is without power to compel the states to follow FCC interconnection and network access requirements for intrastate purposes.

2. <u>Other Provisions of the Act Clearly Preserve State Authority.</u>

Not only section 2(b), but the provisions of the 1996 Act itself lead to the conclusion that the Act cannot fairly be read to call for a rigid national uniformity that would restrain an individual state from pursuing an interconnection approach that, in its judgment, addresses state specific conditions. Preeminent among these is 47 U.S.C. § 251(d)(3) which bars the FCC from adopting any regulation that would preclude the enforcement of any regulation, order, or policy of a state commission that: (1) establishes access and interconnection obligations of LECs; (2) is consistent with section 251; and (3) does not substantially prevent the implementation of section 251 and that part of the 1996 Act relating to the development of competitive markets.[4] There is no requirement that the state commission's order, rule, or policy be consistent with any regulations of the Commission. This omission (of a requirement to comply with Commission regulations) is an unambiguous indication of Congress' intent to maintain the states' authority to implement their own access and interconnection arrangements, however varied, subject only to the three statutory conditions. Congress, in enacting section 251(d)(3), protected from FCC preemption those states, such as Washington, that have existing access and interconnection orders, rules, or policies affecting LECs, as well as protecting future policy making in this area by the states. The statutory language, in both structure and plain meaning, is properly read to require the FCC to take care as it fashions its regulations to avoid precluding interconnection policies which are state specific. Thus, rather than demanding a rigid national uniformity, the Act contemplates a variety of approaches, since all the states' schemes to address interconnection access and competition are not identical, as the Commission notes in the NPRM.

In addition, there is a range of variation among the states in the regulation of telecommunications carriers; nevertheless, Congress, for the most part,

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[4] The Joint Explanatory Statement of the Committee of Conference (Joint Explanatory Statement) summarizes section 251(d) as follows:

> "New section 251(d) requires the Commission to adopt regulations to implement the new section 251 within 6 months, *and states that nothing precludes the enforcement of State regulations that are consistent with the requirements of new section 251.*

Joint Explanatory Statement, p. 122 (emphasis added).

preserved the authority of state commissions to establish or enforce other requirements of state law in reviewing agreements. 47 U.S.C. § 252(e)(3). This "preservation" of state authority is a modification of the grounds for rejection of interconnection agreements in section 252(e)(2). The grounds for rejection include failure to meet the requirements of the FCC regulations under section 251. The effect of the "preservation of authority" language is to say that "notwithstanding" the grounds listed in paragraph (2), a state can impose its own standards, or even "establish" them, as part of its approval process. Agreements are not only measured against section 251 and the FCC's regulations, but against the state's requirements. This recognition of the scope of state authority dovetails with section 251(d)(3) above.

By contrast, Congress was explicit when it intended to eliminate variations among the states and confer exclusive jurisdiction on the FCC, as in the administration of the North American Numbering Plan. 47 U.S.C. §§ 251(e).

Other important provisions of the Act also make clear that state authority is to be broadly preserved. Section 253, which preempts state entry barriers, is cited in section 252(e)(3) as a limitation on the state's authority to impose its own requirements as part of the interconnection approval process. While preempting entry barriers, however, section 253 also preserves broad state authority to impose, on a competitively neutral basis, requirements to advance universal service, protect the public safety and welfare, ensure continued quality of telecommunications service, and safeguard consumer rights. State interconnection pricing and other standards for interconnection are encompassed by these areas.

Sections 261(b) and (c) give strong protection to state regulations enacted both before and after the effective date of the Act and to state requirements necessary to further competition in telephone exchange service. Taken together, these provisions of the Telecommunications Act of 1996 clearly establish limits on the scope of federal regulatory action and accord protection to state authority and to state interconnection initiatives.

The provisions in the 1996 Act, which allow for variations among states and which preserve existing and future state requirements, raise questions regarding the FCC's authority to impose an overly rigid national rule governing interconnection, resale, and unbundling, even if there were sound policy reasons for doing so. The Washington UTC does not dispute that, to the extent the 1996 Act expressly requires compliance by the states, inconsistent state laws, rules, or orders would be preempted. We do not read the 1996 Act, however, as impliedly preempting any of the states' authority to regulate in these areas. First, the 1996 Act does not embody a federal regulatory scheme that is "so pervasive as to make reasonable the inference that Congress left no room for the states to supplement it." Fidelity Fed. Sav. & Loan Ass'n v. De la Cuesta, 458 U.S. 141, 153, 102 S. Ct. 3014, 73 L. Ed. 2d 664 (1982). As previously noted, it is perfectly reasonable to infer that Congress left room for the states to complement the federal scheme inasmuch as Congress expressly allowed state regulation to supplement, and in some cases supersede, federal regulation.

Second, since Congress left much to state regulation, as long as it is consistent with the 1996 Act, compliance with state and federal regulation is not a physical impossibility which would support a claim of implied preemption. Florida Lime & Avocado Growers, Inc. v. Paul, 373 U.S. 132, 142-43, 83 S. Ct. 1210, 10 L. Ed. 2d 248 (1963). Thus, the 1996 Act does not impliedly preempt state regulation, and the scope of express preemption is limited. We are, however, concerned from the discussion in paragraphs 29 through 35 that the FCC may purport to preempt the states in the rules it adopts to implement section 251.

A federal agency acting within the scope of its congressionally delegated authority may preempt state regulation if, but only if, the preemption is reasonable, authorized, and consistent with the underlying statute. Fidelity Fed. Sav. & Loan Ass'n v. De la Cuesta, 458 U.S. at 153-54. While the FCC has authority to adopt regulations under the 1996 Act, if those regulations are overly restrictive of variations among the states, such regulations could be challenged as unauthorized and inconsistent with the underlying statute for the reasons discussed above regarding the regulatory authority left for the states under the Act.

The Supreme Court has held that broad congressional grants of power can provide federal agencies the authority to adopt regulations preempting state law. For example, in De la Cuesta, where Congress had provided that the Federal Home Loan Bank Board was "authorized, under such rules and regulations as it may prescribe, to provide for the organization, incorporation, examination, operation and regulation" of federal savings and loan associations, the Board properly preempted state restrictions on due-on-sale practices. De la Cuesta, 458 U.S. at 160. The court held that the statutory language placed no limits on the Board's authority to regulate the lending practices of federal savings and loans. Id. at 161.

Section 251(d)(1) contains no similar broad mandate. Congress granted the FCC authority "to establish regulations to implement the requirements of this section." Not only is this grant of rulemaking authority in contrast to the broad grant in De la Cuesta, but also it must be read in conjunction with the other provisions of section 251. Preemptive national standards would be contrary to the explicit congressional acknowledgment contained in section 251(d)(3) (and the other provisions of the 1996 Act noted above), that a variety of state regulatory approaches to interconnection and access are permitted as well as complementary state requirements that do not conflict with the federal statutory standards. The "best way to determine whether Congress intended the regulations of an administrative agency to displace state law is to examine the nature and scope of the authority granted by Congress to the agency." Louisiana Pub. Serv. Comm'n v. FCC, 476 U.S. at 370. In this case, Congress has simply not granted the FCC the authority to adopt an overly rigid scheme of national rules that would preempt state initiatives to adopt other regulatory schemes that are consistent with the 1996 Act.

C. Duty to Negotiate in Good Faith (NPRM ¶ 47).

In paragraph 47, the NPRM seeks comment on the extent to which the FCC should establish national guidelines regarding good faith negotiation under section 251(c)(1), and on what the content of those rules should be. The Washington UTC would support FCC rules which would penalize carriers who devise barriers to negotiations. In particular, the types of tactics described in the NPRM, such as refusing to begin to negotiate until the requesting telecommunications carrier satisfies certain conditions, such as signing a nondisclosure agreement, or agreeing to limit its legal remedies in the event that negotiations fail, should be prohibited.

D. <u>Interconnection (NPRM ¶¶ 49-64).</u>

Interconnection should be accomplished in the most efficient manner possible, but as a practical matter, the term "technically feasible" will be driven by what the incumbent carrier has in place at the location where interconnection is desired. Carriers have deployed equipment for analog to digital conversions for nearly three decades and will continue to do so for perhaps one or two more decades. While the industry is moving towards digital to optical (SONET) conversions, and will likely see SONET to ATM conversions shortly, the specific technology used (or not available) should not be a barrier to interconnection. Conversions can always be used as a bridge from one technology to another and can make interconnections technically feasible. These same conversion methods are currently used by incumbent carriers and therefore should not deter new entrants from configuring their own networks as they deem most efficient and technically advanced.

The Washington UTC has reviewed the California "preferred outcomes" approach, referred to in NPRM paragraph 52, and views it as a good way to reconcile a federal policy with the rights of states to make decisions consistent with federal law. The preferred outcomes provide both guidance to negotiating parties, mediators, and arbitrators but, more importantly, the preferred outcomes describe an optimal and efficient interconnection arrangement that ensures new entrants do not have to suffer by virtue of the superior bargaining power held by incumbent LECs. The Washington UTC is considering whether to distill a similar set of "preferred outcomes" from its interconnection orders and policy papers on competition and to then use those outcomes to guide its mediation, arbitration, and review of interconnection arrangements.

The NPRM, in paragraph 56, seeks comment on what constitutes a "technically feasible point" within the incumbent LEC's network. The Washington UTC has found that IXCs and incumbent LECs that share extended area service (EAS) territories have interconnected with one another for years. IXCs generally interconnect with the LEC's network at a "point of presence", usually the IXC's central office location. Incumbent LECs generally interconnect with one another at mutually agreed upon "meet points," such as on the boundary between their service territories, using relatively simple methods such as the splicing together of trunks. Interconnection between incumbent LECs and new entrants do not involve unique technological problems that the incumbents do not already face when interconnecting among themselves.

The Washington UTC has ordered that companies establish mutually agreed upon meet points for purposes of exchanging local and toll traffic. Such meet points should be established, upon request, for each company authorized to provide local exchange service in a given area. Incumbent LECs may establish, through negotiations, separate meet points for each company or negotiate a common hub by which multiple companies can come together efficiently. Each company shall be responsible for building and maintaining its own facilities up to the meet point. In addition, each company is responsible for the traffic that originates on its network up to the meet point, and for the terminating traffic handed off at the meet point to the call's destination. Negotiating additional meet points does not appear to be a serious problem requiring a determination of the Washington UTC's authority. It appears that LECs already are using a large number of different points to interconnect their own switches and their own customers and are using a variety of technologies. Thus, it would seem that all of these points are technically feasible for interconnection with other parties. Requiring incumbent LECs to demonstrate that interconnection at a particular point is technically infeasible is appropriate, and consistent with Washington's meet point decision. The Washington UTC also supports requiring that the party alleging harm to the network be required to present detailed information to support such a claim.

In paragraph 57, the NPRM tentatively concludes that the minimum federal standard should provide that interconnection at a particular point will be considered technically feasible within the meaning of section 251(c)(2) if an incumbent LEC currently provides, or has provided in the past, interconnection to any other carrier at that point, and that all incumbent LECs that employ similar network technology should be required to make interconnection at such points available to requesting carriers. The Washington UTC agrees.

In regard to comments on state policies cited in paragraph 62, the Washington UTC adopted a meet point model where each carrier is responsible for the traffic to and from a mutually negotiated meet point. Evidence showed it provided the best incentive for all parties to minimize interconnection costs and would not necessarily force one carrier to adopt the architecture of another in order to interconnect. Meet point interconnection also eliminates any need or requirement to review cost studies since each carrier would be responsible for its own costs up to the meet point. The Washington UTC endorses meet point interconnection as a national guideline, or preferred outcome, for interconnection.

In paragraph 63, the NPRM seeks comment on what criteria may be appropriate in determining whether interconnection is "equal in quality." The Washington UTC would agree with the approach cited by the FCC with regard to activity by Iowa, which prohibits a rate-regulated incumbent from providing inferior interconnection to another provider. There are currently end-to-end standards for transmission levels (loss limits), distortion of signals, and noise levels. These are generally accepted levels as defined by Bellcore and other standards organizations. The quality of an interconnection to a new entrant should be identical to service which the LEC carries itself. There may need to be some variation initially, and certainly some experimentation, within the states. For instance to provide for interim number portability, remote call forwarding and similar techniques are being used until a more efficient number porting system can be developed and implemented. Unfortunately these interim methods result in the introduction of additional switching paths, some additional connection delays, and a resultant loss in some degree of quality. However, these initial drawbacks should not be used as an excuse to delay interconnection, or as an argument to not use some form of portable numbers at this stage of development. In fact cases like this should be considered as experimental and should be encouraged for the ultimate development of more efficient and higher quality interconnection arrangements.

One problem identified in the Washington UTC interconnection docket and in a subsequent case dealing with quality of service is the lack of enforcement or incentive for the incumbent to provide efficient service to competitors. Existing access tariffs allow customers to cancel their orders in instances of poor service but such a remedy does not satisfy a new local carrier that needs to interconnect with the incumbent. Cancelling the order or receiving poor service may mean lost business for the new entrant which simply advantages the incumbent. One option would be to establish a preferred outcome for interconnection agreements that would require compensation for any revenues lost as a result of poor quality or service.

The NPRM tentatively concludes, in paragraph 64, that the FCC has the authority to require, in addition to physical collocation, virtual collocation and meet point interconnection arrangements, as well as any other reasonable method of interconnection. The Washington UTC agrees there is merit to the FCC setting guidelines for enforcing the Act's interconnection mandates.

E. Collocation (NPRM ¶¶ 66-73).

In paragraphs 66 through 73, the NPRM seeks comment on whether there should be national rules guiding collocation. The NPRM captures the struggles the Washington UTC has had when it says in paragraph 67 that "disputes or ambiguity regarding the parties' obligations may delay competitive entry." In spite of a decision ordering collocation, the Washington UTC still has not seen a set of terms and conditions that comes close to resolving disputes between the parties. Clearly, the incumbent LEC has no incentive to negotiate in good faith. A tough set of FCC preferred outcomes tilted in favor of the new entrant may help balance the power in interconnection negotiations. The Washington UTC supports federal guidelines to implement the Act's collocation requirements with the specific caveats that intrastate pricing be left to the states and that states, as federal law provides, determine if other than physical collocation is necessary.

F. Unbundling (NPRM ¶¶ 77-101).

In paragraph 77, the NPRM tentatively concludes that the FCC should identify a minimum set of network elements that incumbent LECs must unbundle for any requesting telecommunications carrier and, to the extent necessary, establish additional or different unbundling requirements in the future as services, technology, and the needs of competing carriers evolve. The Washington UTC concurs with a federal minimum set of unbundled elements but the FCC does not have authority to price intrastate unbundled elements unless a state fails to meet its statutory obligations.

In paragraph 78, the NPRM tentatively concludes that states may require additional unbundling of LEC networks. The Washington UTC agrees.

In paragraph 81, the NPRM seeks information regarding the policies that states have adopted to address network unbundling. On two previous occasions, the Washington UTC attempted to initiate rulemakings for unbundling only to be met with vigorous opposition by incumbent LECs who argued that the Washington UTC has no authority to order unbundling or changes in tariff resale provisions.

Ten years ago, in Docket No. U-86-86, the Washington UTC instructed U S West that it expected the company to move in the direction of unbundling monopoly and competitive elements as much as possible. In re Pacific Northwest Bell Telephone Company, Docket Nos. U-86-34, U-86-35, U-86-36, U-86-86, and

U-86-90, Fourth Supplemental Order (Apr. 1987). That continues to be the Washington UTC's policy. See WUTC v. U S West Communications, Inc., Docket Nos. UT-911488,-911490,-920252, Fourth Supplemental Order (Nov. 1993).

The Washington UTC has also indicated that the ability of an incumbent company to successfully acquire pricing flexibility, either through seeking competitive service classification or through an alternative form of regulation, could rest on the extent to which it has freed up its potentially competitive services from its bottleneck and monopoly services. The Washington UTC believes that incumbent LECs will see the benefit of unbundling, not only for the advantages associated with lighter regulation, but also in maximizing the use of their networks and the resulting revenues associated from that use. Thus, while we would prefer that companies step forth with unbundling tariffs, the Washington UTC has been cautious in ordering unbundling. In Docket UT-941464 et al, the Washington UTC ordered U S West and GTE to offer unbundled loops and line-side interconnection.

In paragraph 87, the NPRM tentatively concludes that incumbent LECs have the burden of proving that it is technically infeasible to provide access to a particular unbundled network element. The FCC also tentatively concludes that the unbundling of a particular network element by one LEC (for any carrier) evidences the technical feasibility of providing the same or a similar element on an unbundled basis in another, similarly structured LEC network. The Washington UTC agrees.

In paragraph 89, the NPRM requests comment on whether the FCC should establish minimum requirements governing the "terms" and "conditions" that would apply to the provision of all network elements. For example, should the FCC require incumbent LECs to provide network elements using the appropriate installation, service, and maintenance intervals that apply to LEC customers and services? The Washington UTC tentatively recommends that the FCC should do so, particularly if the FCC includes punitive measures in case of LEC failure to comply.

In paragraph 91, the NPRM requests comment on whether the FCC can and should prohibit an incumbent LEC from providing requesting carriers with access inferior to that which it provides itself. The Washington UTC recommends that the FCC can and should do so.

In paragraph 101, the NPRM notes that some states have defined a switching "port," which usually includes all the capabilities of the local network provided at the main distribution frame of a LEC central office. The FCC should establish minimum requirements for provisioning ports ; however, the FCC should reference, when possible, the standards set in national and industry forums.

The Washington UTC asserts that failure to unbundle a switching element would completely impair a requesting carrier's ability to provide the services that it seeks to offer. Unbundled loops and ports are the main building blocks of interconnection, and as such are absolutely essential.

G. Pricing NPRM ¶¶ 117-157).

In paragraph 117, the NPRM tentatively concludes that the FCC has authority under section 252(d) to adopt pricing rules to ensure that rates for interconnection, unbundled network elements, and collocation are just, reasonable, and nondiscriminatory. The FCC also tentatively concludes that it has statutory authority to define what are "wholesale rates" for purposes of resale, and what is meant by "reciprocal compensation arrangements" for transport and termination of telecommunications.

The Washington UTC respectfully submits that jurisdiction over intrastate pricing remains with states and that the federal act, as discussed in earlier pages, does not preempt the states authority in this area. The Washington UTC would support general pricing guidelines that recognize the right of states to adopt their own pricing standards.

The Washington UTC disagrees with the FCC's belief, in paragraph 118, that the statute gives the FCC authority to establish pricing principles interpreting and further explaining the provisions of section 252(d) for the states to apply in