The Commission has thoroughly considered the incumbents' legal arguments related to compensation. It concludes that it has the authority to order bill and keep as an interim compensation mechanism. It concludes that it has the authority to order all companies to adopt the same compensation mechanism for all local interconnection, including EAS traffic. It concludes that USWC has not demonstrated a need for, or the amount of, an interim universal service charge. The parties' positions, and the Commission's discussion and decisions on these issues, follow.

a. The Commission's legal authority to order bill and keep.

(1) Positions of parties

USWC argues the Commission's statutory authority contemplates that sufficient and remunerative rates will be charged for services, and that no statute gives the Commission authority to prescribe *no* rates for a proffered telecommunications service, that is "bill and keep." Specifically,

- RCW 80.36.080 gives the Commission the power to regulate rates for telecommunications services for fairness, reasonableness, and sufficiency. This is not authority to charge "no rates."

- RCW 80.36.160 and 80.36.855 are the Commission's only specific authority over interconnection, and, read together with 80.36.080, give the Commission authority only to review intercompany interconnection service rates for reasonableness and sufficiency.

- RCW 80.04.110 gives the Commission jurisdiction over complaints by competing telecommunications companies against the rates or regulations of another if they are "unreasonable, unremunerative, discriminatory, illegal, unfair or intending or tending to oppress the complainant, to stifle competition or to create or encourage the creation of a monopoly." [Emphasis supplied.] The Commission's remedy is limited to establishing remunerative rates to be observed by all companies. "Thus, once again it is seen that rates must be charged that are remunerative, or in excess of costs, in order to be competitively fair, and all competing carriers must charge such rates."

- RCW 80.36.330(3) provides: "Prices or rates charged for competitive telecommunications services shall cover their costs." That sufficient rates for services are rates that are above costs, unless the Commission has a compelling record to require higher than otherwise necessary rates to some class of customer in order to subsidize the rates of others, in the furtherance of a mandated public policy, like universal service.

- RCW 80.36.180, which allows the Commission to find that rates charged for or access to a noncompetitive service, such as carrier access service, grants an "undue or unreasonable preference or advantage" to the offering company or another vis-a-vis the complaining company, at most would permit the Commission to utilize an imputation test for local exchange service.

USWC argues that every company is absolutely entitled to reasonable and sufficient rates for services rendered; otherwise its property is being confiscated for the benefit of another, contrary to fundamental constitutional and public utility law.

GTE echoes the argument that if the Commission orders a compensation mechanism that does not provide full and just compensation for the service provided, there will be an "unconstitutional taking" of the incumbents' property. It cites State Ex Rel. Pub. Serv. Co. v. Skagit River Tel. & Tel. Co., 85 Wash. 29, 49 (1915).

To other parties' arguments that there is compensation with bill and keep, "in-kind" rather than "in cash," GTE responds that "neither the state nor federal constitution provides that the obligation to make just compensation may be satisfied by "in kind" compensation, i.e., "forced barter."

GTE argues that compensation must be full and just, that this would not occur under bill and keep unless the exchange of value were equal, that for bill and keep to result in exchange of equal value traffic must be perfectly in balance, and that there is no evidence that this would be the case under the ALECs' proposal.

(2) Commission discussion

The Commission rejects the argument that it lacks authority to order bill and keep. Bill and keep is not a system of interconnection "for free." Bill and keep is compensatory. There is a reciprocal exchange of traffic in which each company receives something of value. As Dr. Cornell persuasively testified:

> It is important to remember that rival local exchange carriers are not customers, but co-carriers. That means, whenever the rival has acquired a single customer, traffic will flow both ways. Mutual traffic exchange simply involves each carrier "paying" for the other to terminate local calls originated by its subscribers by mutually terminating local calls originated by the customers of the other carrier. That is why I referred to it as payment "in kind" rather than "in cash." (Ex. T-140, p. 26)

Moreover, as DOD/FEA argues, bill and keep is more consistent with the structure of cost occurrence than are the access charges that the incumbents propose. The reason that local exchange services are flat rated is that most of the cost of local service is not sensitive with traffic volume but is related to access to the public switched network. The principal cost of terminating calls relates to the provision of the line to the subscriber's premise. The cost of this line is largely insensitive to the volume and duration of calling. Even end-office switching costs have a large non-traffic sensitive component. It is thus simply wrong to suggest that the bill and keep procedure means that calls are being terminated "for free." The termination function is paid for, not by the originating company, but by the end-use customer in his flat monthly charge. That charge covers all access to <u>and from</u> the public switched network. Under bill and keep, a company is fully compensated for most call terminations by its own customer.

It also should be kept in mind that confiscation in this context is measured not by any particular element of a rate structure, but by whether the end result of the entire process results in sufficient rates overall. <u>FPC v. Hope Natural Gas Co.</u>, 320 U.S. 591, 64 S.Ct. 281, 88 L.Ed. 333 (1944); <u>POWER</u>, <u>supra</u>, 104 Wn.2d at 811.

The record does not support the incumbents' argument that they would not be fairly compensated because traffic may not be "in balance." USWC concedes that it has no traffic studies indicating the likelihood of any traffic imbalance. (Owens, TR., p. 212; Montgomery, Ex. T-84, p. 44) To the extent Washington traffic patterns could be analyzed by Commission Staff, their analysis of EAS traffic supports the position that traffic will be in balance, within ten percent. (Wilson, Ex. T-155, p. 24) The only evidence in the record on local traffic balance between incumbents and ALECs relates to MFS's experience in New York, in which traffic between MFS and NYNEX has been in balance or has favored NYNEX. (Schultz, Ex. T-126, p. 16)

Moreover, as ELI witness Montgomery persuasively testified, in a competitive co-carrier environment, traffic imbalances are unlikely because the ALEC serves the same community of interest area. Thus, unless the ALEC's incentives concerning which customers to serve are artificially distorted by discriminatory compensation rules and the absence of full local interconnection including number portability, the ALEC should see calling characteristics that are highly similar to the dominant incumbent LEC serving the same area. Thus, traffic flows for the ALEC are likely to be in balance. (Ex. T-84, pp. 44-45)

To the argument that bill and keep is not fair or compensatory unless traffic is perfectly in balance, the Commission notes that the parties cannot even agree on whether "balance" should be measured in terms of amount of traffic delivered for termination or costs to the companies of handling the traffic that is delivered for termination. Also, no compensation mechanism guarantees "perfect" compensation, as the extensive testimony regarding USWC billing errors and auditing difficulties related to minutes of use compensation attests.

That bill and keep is a fair compensation method is evident from the fact that it is the dominant current practice between adjacent LECs around the country, including the state of Washington, for terminating local (EAS) traffic between adjacent exchanges. Where there is no gain to be achieved from anticompetitive or inefficient behavior, companies have elected bill and keep because of its inherent simplicity and efficiencies. As Dr. Zepp stated: "This intercompany compensation method has been used . . . to establish intercompany compensation between local co-carriers who are <u>neighbors</u>. It is just as appropriate for local co-carriers who are <u>competitors</u>." (Ex. T-151, p. 11 (emphasis in original))

Finally, the Commission notes that several other Commissions have ordered bill and keep on an interim basis. In a decision adopted July 24, 1995, the California Public Utilities Commission ordered bill and keep to be implemented for one year, for the termination of calls between ALECs and the incumbent LECs. Orders Instituting Rulemaking and Investigation on the Commission's Own Motion into Competition for Local Exchange Service, Docket Nos. R. 95-04-043 and I. 95-04-044, at p. 47 (1995). An initial decision of the administrative law judge for the Pennsylvania Public Utility Commission likewise ordered the use of bill and keep, for an undetermined period, for the termination of local calls between the ALEC and the incumbent LEC. Application of MFS Intelenet of Pennsylvania, Initial Decision, Docket No. A-310203F0002, at p. 67 (June 6, 1995). The Michigan Public Utilities Commission adopted a modified bill and keep methodology, authorizing assessment of a per-minute charge for local interconnection only if there is a traffic imbalance of greater than plus or minus five percent. Otherwise, bill and keep will apply. Re City Signal, Inc., 159 PUR 4th 532, 543-48, 577 (February 23, 1995).

b. The Commission's ability to defer a decision on funding universal service.

(1) Positions of parties

USWC argues that an I-USC is needed now, and cannot be put off, for both policy and legal reasons. It argues that there is every expectation that USWC's large, powerful competitors will quickly gain significant market share in the Seattle business market, where USWC's business revenues are concentrated, which will imperil USWC's ability to maintain its responsibilities for customers and areas of the state which competitors choose not to serve.

USWC argues that it is important to realize that this Commission has no authority to fund universal service except through access charges to interconnecting carriers. It cannot fund universal service by forcing USWC to maintain a rate structure that does not allow it to earn a fair rate of return on its investment. It argues that this is exactly what will happen if the Commission defers consideration of universal service. Competitors with no responsibilities will steal off large portions of USWC's revenues, while USWC is not allowed to withdraw from residential or rural service or otherwise take steps to protect its earnings.

USWC argues that because USWC's business and residential service rates are not at issue in this proceeding, USWC cannot protect itself from the loss of revenue that will result from the imbalance in those rates by rebalancing them. The Commission will be denying USWC the right to a fair return on its investment if it fails to order an I-USC to make up for the revenue loss caused by the imbalance.

USWC argues that until the Legislature approves a competitively neutral funding mechanism to make rates affordable in low density and low income market segments, the industry and the Commission presently must use the interconnection charges as needed to preserve universal service.

(2) Commission discussion and decision

The Commission is not persuaded that there is an immediate need to deal with the universal service issue, or to grant USWC some sort of interim universal service charge. As Dr. Cornell demonstrated, it will be some time before new entrants have any genuine effect on the revenues of incumbent LECs. She described how previous experiences with telecommunications competition have shown that market shares change slowly even when changing providers is relatively easy for consumers, as is the case in the long distance services market. Moreover, it will be difficult for customers to change local exchange providers in the near future. Most will not even have the option, because networks take time to construct.

Public Counsel witness Murray also testified persuasively that no harm is likely to result to universal service from deferring this issue, because competition is so new and the financial impact of competition on incumbent LECs is likely to be small. (Ex. T-135, p. 3) Her position was unshaken on cross-examination.

Universal service presently is under review in a Washington Exchange Carriers Association investigation, Docket 95-01. We believe that proceeding, and USWC's pending general rate case, are appropriate forums for addressing universal service issues.

We also agree with Public Counsel's argument that a difference in obligation to serve between USWC and ALECs, to the extent it exists, is no reason to adopt the I-USC. Being the ubiquitous provider confers substantial benefits on USWC. As Dr. Montgomery pointed out, even if access revenues from some residential customers may be below the incremental cost as calculated by USWC, that does not correlate to an overall below cost of service, when one considers the entire residential class, including all the intraLATA toll usage, CLASS services (e.g., call waiting, call forwarding, etc.), and other services. (Ex. T-84, pp. 16-19) As ELI and TRACER argue, the market shows that being the ubiquitous provider of telephone network access is an asset rather than a liability. Access lines are what provide economies of scope; many services can be provided once access is available but not without it. (Zepp, Ex. T-151, p. 28)

Moreover, USWC's proposed I-USC is an entirely arbitrary, non-cost-based assessment. [See, Owens, TR., pp. 236-237] The company has not quantified any "interim" losses that may occur as a result of interconnection, has not quantified what support is needed to protect universal service, has not tried to prove the revenue effects of its being a "carrier of last resort", has not quantified the costs of its carrier of last resort status, and has not quantified the amount of any "subsidy" to residential service. (E.g., Murray, Ex. T-134, p. 8; Murray, TR., p. 1901; Wilson, TR. p. 2176; Cornell, Ex. T-140, pp. 32-33; Montgomery, Ex. T-84, pp. 16-19) USWC has not provided any guarantee that the funds would be used to protect universal service. [Owens, TR., pp. 239-240] The I-USC merely compensates one competitor for lost revenues -- both current and future -- resulting from a former or potential customer's decision to obtain service from another provider. It is simply a device to protect USWC from revenue losses and provide it with an opportunity to impose a price squeeze on ALECs.

Commission Staff's analysis of USWC's justification for the $0.0228/minute shows that the amount is entirely arbitrary. It mimics the carrier common line charge while having nothing in common with it. As Staff notes, USWC witness Owens admitted on cross that the company's figure was arbitrary. [TR., pp. 221-225] As Staff argues, the only certainty about this charge is that, if approved, it will effectively prevent any competition for local exchange services from occurring at all.

As Public Counsel points out, cost studies upon which Mr. Farrow relies for his "subsidy" argument, which were not even filed in this proceeding, do not reflect the Commission-prescribed fill factors, depreciation rates, or cost of capital (Farrow, TR., pp. 705-707), inconsistent with the policy established in the recent "terminal loops case."[17] The studies are inconsistent with USWC's own testimony [Harris, TR. 173] on what is "forward-looking" technology. Finally, the residential cost study contains a basic flaw: USWC improperly allocates 100% of the local loop to residential service, and 0% to services that rely and depend on the use of that facility. The Commission in the past has addressed this issue and found it appropriate to allocate a portion of the loop costs to toll and other services. See, Eighteenth Supplemental Order, Cause No. U-85-23, et al (December 1986). Vertical services such as call waiting, or any other services that use the loop, should receive an allocation of the loop's costs.

We also agree with Public Counsel's argument that the I-USC is likely to vastly overcompensate USWC for whatever problem USWC is trying to solve. It would apply to every line the ALEC installs, if USWC terminating access is provided, including residential lines served by the ALEC which are not imposing a burden on USWC at all. (Owens, Ex. T-32, p. 11; Owens, TR., p. 461) Also, the I-USC would apply even to ALEC lines that a customer wants for purposes of service redundancy, and apply to new lines obtained when a customer opens a new location. [Owens, TR., p. 461; Owens, TR., pp. 461-462]

Finally, as Public Counsel points out, USWC has not and is not being forced by this Commission to serve areas it does not wish to serve. It recently sold approximately 28 rural exchanges to Telephone Utilities of Washington, Inc. d/b/a Pacific Telecom.[18]

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[17] WUTC v. U S WEST Communications, Inc., Docket Nos. UT-930957, UT-931055, and UT-931058, Fourth Supplemental Order (September 1994).

[18] See, Third Supplemental Order Accepting Settlement, Docket Nos. UT-940700,-940701 (June 1995).

c. **Whether all companies must adopt the same compensation mechanism for all local interconnection, including EAS traffic.**

(1) Positions of parties

The complaints of TCG and ELI essentially allege that any compensation arrangement other than bill and keep subjects the complainants to unreasonable prejudice or disadvantage and is discriminatory. The complaints allege that the incumbents employ a bill and keep method of mutual compensation with one another for the exchange of local traffic (i.e., EAS traffic), and that their refusal to offer a bill and keep mechanism to the complainants for the exchange of local traffic subjects the complainants to unreasonable prejudice or disadvantage and is discriminatory.

The ALECs argue that the Commission should order that all companies must adopt the same compensation mechanism for all local interconnection, including EAS traffic.

The incumbent LECs contend that the compensation mechanism that they have adopted for the exchange of EAS traffic has no bearing on the question of what is the appropriate compensation mechanism for their exchange of either "local-like" or "EAS-like" traffic with ALECs.

GTE argues that it currently provides no interconnection service to incumbent LECs for local traffic, because EAS traffic is not "local" traffic, despite its similarity from an end user billing point of view. It argues that therefore the contract rate at which it has offered to terminate ALECs' local traffic cannot be discriminatory, because there is no intercompany local traffic among incumbent LECs. GTE further argues that while its proposed interconnection rate "treats" ALECs' "local-like" and "EAS-like" traffic the same, the Commission has no authority to order it to do so in this proceeding.

GTE argues that the complainants' claim that denying them bill and keep for their traffic on existing EAS routes would be discriminatory has no merit. It argues that undue discrimination can exist only as to "like and contemporaneous service . . . under the same or substantially the same circumstances and conditions" (quoting from RCW 80.36.180), and that there is significant uncontroverted evidence on the record that the existing intercompany EAS compensation situation is substantially different from complainants' situation: 1) the participants in the current arrangement are LECs which do not have overlapping territories and which were not in competition for the provision of local exchange and other services when the arrangement was implemented; and 2) the EAS compensation mechanisms are based on cost studies specific to each EAS route.

GTE argues that the Commission does not have the authority in this proceeding to prescribe the compensation arrangements between incumbent LECs and new entrant ALECs for the exchange of traffic on existing EAS routes. It argues that the EAS designations apply only to companies that are parties to an EAS proceeding under the Commission's EAS rules.

The statute clearly requires a specific EAS hearing procedure. Thus, if complainants wish to be formally integrated into the current intercompany EAS compensation arrangement, they must proceed through that statutory procedure.

WITA argues that EAS does not represent an industry standard for local interconnection. First, local interconnection is not EAS, which is a toll substitute. Second, as described by WITA witness Smith, bill and keep in the EAS environment is a recent phenomenon; it is a compromise involving an entire package of EAS rules. WITA argues that the ALECs grudgingly admitted on cross-examination their mischaracterization of bill and keep as the industry standard for EAS.

ELI argues that the entire purpose of the Commission's EAS rules is to establish rational "local" calling routes between "communities of interest." The specific identity of the companies involved is irrelevant. To avoid getting bogged down in legal distinctions about which companies are "privy" to existing contracts or covered by existing rules, the Commission, as a matter of competitive policy, should declare that existing local calling areas (i.e., EAS routes) apply to ALECs for purpose of distinguishing between local and toll calling.

TCG argues that EAS should be treated the same for all companies. It argues that EAS areas are established for the benefit of consumers within a community of interest that does not correspond to the LEC-established exchange boundaries. Customers who make calls within that area should be treated the same, not subject to higher charges simply because they choose service from a company other than one of the original EAS companies. TCG recommends that the Commission adopt the same compensation mechanism for all local interconnection, including EAS traffic.

Public Counsel argues that the discrimination complaints of the ALECs present a close legal and factual question. "Their claims are likely meritorious, providing further justification for a bill and keep compensation arrangement." Public Counsel's argument is more fully set out below in the discussion of the TCG and ELI complaints.

Public Counsel argues that:

> It is true that significant public policies are at work in creation of EAS routes, and such routes are set as between specific companies. It is also true that "obligation to serve" may be somewhat different between new LECs and incumbents. But the public policy is to respond to customer needs and demands for local, flat-rated calling within their community of interest. The focus for discrimination should likewise be placed on the customer interest in the situation. The new entrant must attempt to attract the same customers as the incumbents, yet without the same compensation system. As WITA's witness concluded, an access, or usage based cost compensation "will lead to a shift from flat rate to measured service." (Smith, Ex. T-157, p. 17).

Incumbent LECs do not face this pressure in the bill and keep environment they enjoy.

MFS argues that if ALECs are required to pay rates higher than EAS rates, incumbent LECs would be engaging in blatant discrimination against the new entrants. It contends that USWC's proposal to migrate its present EAS bill and keep compensation to new charges based upon "costs" is a transparent attempt to support the LECs' efforts to impose high switched access rates which will serve as barriers to entry on the ALECs.

MCI argues that there is no justification for WITA's argument that the Commission should leave the incumbents' EAS routes intact, but that such routes should not be available to new entrants who are not privy to the routes created under Commission rules. EAS routes are established to reflect the community of interest between two areas. A change of provider serving the involved areas does not change their community of interest.

AT&T urges the Commission to reject out of hand the contention by the incumbents that EAS calls will constitute toll traffic when originated by a new entrant and, as such, incur switched access charges. It argues that customers will expect the new entrants to offer the same local calling areas as the incumbents. AT&T supports the suggestion of Public Counsel's witness that, for the interim period, the ALECs should adopt the existing EAS boundaries but that the Commission should re-examine this issue.

TRACER agrees with ELI witness Montgomery. Dr. Zepp also testified that the Commission should allow all providers to participate in EAS routes on equal terms and conditions. EAS routes are established for the benefit of <u>residents</u> of the various communities, not telephone companies. The Commission's order should recognize that a local calling area's "community of interest" will remain a community of interest regardless of the number or identities of firms providing service.

(2) <u>Commission discussion and decision -- EAS</u>

The Commission rejects the incumbents' analysis. It adopts the ALECs' position that it should order that all companies must adopt the same compensation mechanism for all local interconnection, including EAS traffic.

Existing exchange and most EAS boundaries were adopted during an era of monopoly local service. Establishing them required a proceeding to determine whether there was a community of interest in the proposed territory, and to determine the engineering costs and lost toll revenues that would result from converting the multiple exchanges into a single local calling area with flat rates. That the determinations involved specific LECs is merely an historical circumstance. Those were the only local service providers at the time.

In established EAS territories, the old exchange boundaries no longer define what is "local service." The "local calling area" now is defined by the EAS boundaries. One has only to open a USWC directory to see that USWC defines its customer's "local calling area" as its EAS territory, not in relation to old exchange boundaries.

The ALECs have stated that they will establish local calling areas and rate centers conforming to existing LEC EAS and exchanges boundaries. So long as that is the case, no possible purpose would be served by requiring ALECs to go through an EAS procedure to establish the local calling areas for their customers. That the existing EAS boundaries define a community of interest is already established. The ALECs do not have to re-engineer existing systems in order to adopt the present EAS territories. The ALECs also have no need to study the effect of the present boundaries on their toll revenues, because they have never had toll revenues from calls between points within the EAS territories.

The Commission finds persuasive on this issue the testimony of TRACER witness Zepp (Ex. T-153, pp. 9-11); the testimony of ELI witness Montgomery (Ex. T-87, p. 7); the testimony of Commission Staff witness Wilson (Ex. T-155, p. 34-36); and the analysis and the arguments of Public Counsel, ELI, TCG, MFS, MCI, AT&T, and TRACER, summarized above. The Commission concludes that EAS traffic is local traffic for purposes of compensation for local interconnection, and orders all parties to enter into compensation arrangements for local interconnection consistent with this conclusion.

The Commission recognizes that as companies transition from bill and keep to other compensation mechanisms for local interconnection, the new mechanisms may also apply to existing EAS traffic.

An issue that will have to await future resolution is what compensation arrangements are appropriate when, as is likely to happen, LECs, including the both incumbents and new entrants, seek to establish different local calling areas than those that presently exist, as a means of attracting customers.

C. TERMS OF PHYSICAL INTERCONNECTION

1. USWC's Proposal

USWC proposes to allow ALECs to interconnect with USWC's network only at three points, using USWC-specified facilities. ALECs could interconnect inside or just outside their own central offices, using USWC entrance facilities. In that case, they would have to use USWC transport to USWC end offices. The ALEC also may interconnect at a USWC central office, using USWC's expanded interconnection service. In that case, it may provision its own transport. USWC is not willing to interconnect ALECs at something comparable to a "meet point" as it does with other incumbent LECs. [Owens, TR., pp. 351-2]

2. The Complaints Against GTE

The complaints against GTE do not address the terms of physical connection that GTE has offered, other than GTE's requirement that interconnecting ALECs use separate trunk groups for toll and local/EAS traffic. The complaints allege that this requirement is inefficient and discriminatory. They allege that GTE and other LECs do not require such arrangements of each other for the termination of local traffic.

3. Positions of Parties

USWC contends that the company on whose network the traffic originates should define the point of interconnection, and that the originating company should compensate the terminating company for transport if the point of interconnection is near the originating switch, or pay virtual collocation charges if the originating company chooses to provide its own transport to the terminating end office.

USWC states that its preference is to minimize the number of interconnection points with ALECS. [Owens, TR., p. 511, ll. 10-12] In its brief, USWC contends that there are no major disputes between the parties in arranging physical interconnection.

GTE contends that there is no dispute as to whether GTE will directly interconnect with ALECs. GTE witness Beauvais testified that GTE would be willing to have meet points at mutually agreeable locations. [Beauvais, TR., p. 1822]

GTE argues that while some parties expressed concern about two-trunk interconnection, only TCG specifically had concerns about separating toll and local. Dr. Beauvais testified that GTE needs separate trunk groups for local and toll because it needs to distinguish between toll and local traffic. The practice is necessary given the different rates and compensation arrangements applied to toll and EAS. WITA also recommends that toll and local traffic be exchanged on separate trunks. WITA and GTE state that currently incumbent LECs use separate trunks for exchanging local and toll traffic. Toll traffic is handled through a toll trunk group that goes to a toll tandem switch. EAS traffic is handled on an EAS trunk group.

WITA argues that independent telephone companies presently cannot unilaterally designate interconnection points. Rather, the points of interconnection are negotiated between the interconnecting companies. WITA also argues that there is nothing in this record that demonstrates the need for multiple points of interconnection. WITA further contends that the Commission has no authority to prescribe the points of interconnection for local traffic -- RCW 80.36.200 allows the Commission to order that messages be delivered, not to specify the manner in which they must be delivered, and RCW 80.36.160 gives the Commission the authority to prescribe the routing of toll messages only, not local service.

WITA recommends that ALECs connect to the incumbents at mutually agreed meet points. Public Counsel makes a similar recommendation.

TCG, ELI, and MCI argue for interconnection at any technically feasible meet points similar to meet points established between incumbent LECs. Such meet points are usually at or near the traditional boundary separating incumbent LECs. The LEC and ALEC would share the physical cost of interconnection.

TCG recommends that meet points be determined through good faith negotiations, and that all costs associated with construction of facilities to the meet point be shared equally. TCG requests interconnection using two-way DS1 trunks.

MFS argues that the new ALECs should determine the interconnection point. TRACER agrees, contending that the new entrant is motivated solely by desire to minimize costs whereas the incumbent has an incentive to insist on more costly means of interconnection. TRACER argues further that USWC is not suggesting that existing meet points with incumbent companies be abolished.

MCI argues the USWC proposal is unfair, because the result is that ALECs bear most of the cost of interconnection and transport to the incumbent's switch. In addition, by having the originating company select the point of interconnection, there might be two different points of interconnection for the same route, resulting in the inefficient use of trunks. MCI argues that inefficient interconnection harms new entrants more than it does incumbents since interconnection costs represent a more substantial part of a new entrant's cost of doing business.

4. Commission Discussion and Decision

Technically and economically efficient interconnection of the incumbent LEC and new entrant ALEC networks is essential to the emergence of a competitive local exchange market. Denial of technically and economically efficient interconnection arrangements creates a barrier to entry. The Commission is persuaded that ALECs should have considerable flexibility to configure their networks in a manner they deem suitable.

Based upon the record, it does not appear that physical interconnection between incumbent LECs and ALECs involves any unique technological problems that the incumbents do not already face when interconnecting among themselves. The unresolved issues of physical interconnection concern how interconnection meet points shall be established, how interconnection disputes will be settled efficiently and fairly, and whether separate trunks are required for toll and local.

During cross-examination, witnesses for two ALECs (TCG and ELI) testified that they have achieved interconnection with USWC and that USWC has provided the interconnection facilities that they requested. [TR., p. 988; TR., p. 1260] In direct testimony, ELI indicated that the fact it had trunk-side interconnection with GTE was evidence that there were no technical barriers to overcome. (Cook, Ex. T-88, pp. 2-3) AT&T witness Waddell, however, testified that the process of getting interconnected with USWC was not free of some frustrations and setbacks.

The Commission shares the concerns of USWC and WITA that interconnection costs be minimized. As competition develops and the number of competitors increase, it is particularly important that the cost of interconnection not burden customers who have yet to realize the benefits of competition.

The Commission also shares the concern of ELI witness Cook that USWC (and other incumbent LECs) not be in a position to require that ALECs construct facilities that would make their service offerings not cost-effective. [TR., p. 1176] Interconnection rules should not force one company to adopt the architecture of the other or to incur costs over and beyond what is necessary to interconnect with a competitor.

The Commission adopts the recommendations by Public Counsel, WITA and TCG 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 registered to provide local exchange service in a given area. USWC and other incumbents 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. (Cook, Ex. T-87, p. 3)

In their briefs, USWC and WITA raise the question of the Commission's authority to order additional meet points (meet points in addition to those the incumbents are willing to offer). Given the experiences related by TCG and ELI, negotiating additional meet points does not appear to be a serious problem requiring a determination of the Commission's authority. The Commission expects incumbents and new entrants to negotiate in good faith as co-carriers. If allowing the industry to negotiate their own agreements results in litigation which delays the development of competition, the Commission may need to revisit the issue.

The Commission notes that GTE and USWC currently provision their EAS and toll traffic over separate trunks. [TR., p. 2212, ll. 21-23] We accept WITA's argument that unless the Data Distribution Center is used, the only way that toll traffic can be segregated for billing of terminating access is if local and toll traffic are routed over separate trunk groups. The Commission finds against TCG on its complaint that the imposition of separate trunks for toll and local is unreasonable or discriminatory.

This order requires that, for intercompany compensation reasons, there remains a need to distinguish between toll and local traffic (which includes EAS). Companies should establish an efficient means, either through engineering (separate trunks) or accounting methods (Data Distribution Center), to distinguish between toll and local traffic.

In summary, the Commission agrees with USWC and GTE that there are no major disputes over physical interconnection. It is not surprising that the first interconnections with competitive companies have been beset by glitches and setbacks. However, we do expect that as competition develops, interconnection between companies will become more routine.

To facilitate the process, the Commission believes that it would be appropriate for the industry, Commission Staff, and other interested persons to establish a process for settling disputes as suggested by ELI in its brief. Staff shall hold a workshop with interested persons to explore how mediation or alternative dispute resolution can be used to settle differences regarding the terms of physical interconnection. Staff shall report back to the Commission on whether an industry consensus has emerged, and on any other recommendations Staff may have for resolving disputes, within nine months of the date of this order.

D. UNBUNDLING/RESALE

1. Introduction

Unbundling is the identification and disaggregation of physical components of the local exchange network into a set of "piece parts" which can be separately provisioned, cost supported, priced, and combined in such a way as to provision all service offerings, including those offered by the LEC. (vanMidde, Ex. T-111, p. 2)

Resale refers to the ability of competitors and other wholesale purchasers to resell, to end users, services and facilities they purchase from the incumbent LECs. Tariffs often have been user-specific, containing restrictions on how a service can be used and its resale.

Unbundling network functions and permitting their resale allow new entrant ALECs to be able to combine their facilities and those of the incumbent LEC to offer a complete telecommunications service. Unbundling would enable the ALECs to extend their geographical reach by purchasing facilities from the incumbent LEC rather than constructing all of their own facilities. It also would enable them to assemble the most cost-effective combination of existing network elements and self-provisioned elements.

2. Positions of Parties

The incumbent LECs argue that the Commission has no authority to order unbundling or changes in tariff resale provisions. They contend that it can only order interconnection and regulate the fairness and sufficiency of the rates for the interconnection services and the unbundled facilities the LECs choose to make available.

GTE argues that unbundling is the creation of new services, and that the Commission has no authority to mandate new services.

USWC also argues that the Commission has no authority to order a company to make non-essential services or facilities available to a competitor, and that nothing that USWC is refusing to unbundle is essential. It argues that the Commission should use the "essential facilities" doctrine applied in antitrust law to determine, on a factual basis, whether a facility is essential. It cites a number of court decisions, including United States v. Terminal Railroad Ass'n., 224 U.S. 383 (1912); Otter Tail Power Co. v. United States, 410 U.S. 366 (1973); City of Anaheim v. Southern Cal. Edison Co., 955 F.2d 1373 (9th Cir. 1992); and Alaska Airlines, Inc. v. United Airlines, Inc., 948 F.2d 536 (9th Cir. 1991). Its argument is that an essential facilities claim should not be granted unless it is impractical for the competitor to duplicate the facility, and the monopolist refuses to make the service available to competitors. It contends that if it offers a finished service, it is not refusing to make its facilities available: "Properly analyzed, none of USWC's services are truly essential to competitors so long as interconnection of networks is offered on reasonable terms and conditions." (USWC Brief, p. 43) It also contends that its current competitors are large companies that "are capable of providing their own services needed to provide in turn a complete local service." (USWC Brief, pp. 43-44)

USWC contends that its local transport restructure, virtual collocation service and its unbundled loop service, which it intends to file, represent extensive unbundling.

USWC questions the fairness of resale in the absence of rate rebalancing and continued interLATA toll business restrictions. Also, USWC cautions that resale should not be used to avoid toll access charges.

On rebuttal, USWC indicates that it will file a tariff for "an unbundled loop service." According to USWC, this service will provide a two-wire connection from an end user's premise to the USWC central office main frame, which can be interconnected to the ALEC's virtual collocation equipment or to USWC's private line transport service for delivery to the ALEC.

GTE argues that unbundling involves a multitude of issues, but the record does not provide a sufficient basis for resolving them.

WITA argues that if the Commission does have authority, it should only require unbundling on a bona fide request basis and only when economically and technically feasible.

Commission Staff argues that the authority for unbundling may be found in RCW 80.36.140, second paragraph, which allows the Commission to determine the just, reasonable, proper, adequate and efficient practices to be observed and used, if it determines after hearing that a company's practices are unjust or unreasonable. It argues that the term "practice" is clearly broad enough to cover the offering of services on a bundled or unbundled basis, and, moreover, that the practice of bundling could be "unjust or unreasonable" in a competitive environment.

Commission Staff recommends the Commission order unbundled loops and line side interconnection. Other basic network functions should be unbundled later and a process should be developed to address unbundling requests. Staff witness Selwyn outlined a bona fide request process which could serve as an alternative to a second phase of unbundling. WITA, while concerned about the cost of applying unbundling to smaller companies, appears to support such a bona fide request process for unbundling.

Public Counsel finds authority for unbundling and resale in the declaration in RCW 80.36.300(5) that it is state policy to promote diversity in the supply of telecommunications services and products. Public Counsel argues that the record is clear that unbundling and resale are key elements in fostering diversity in supply of services and products.

Public Counsel witness Murray testified that the high cost of constructing duplicate loop facilities makes it prohibitive for new entrants to provide services to lower-volume customers. But if provided access to cost-based unbundled loop services, competitors may be able to service residential and small business customers at a lower total cost than the incumbent by providing their own switching, trunking, and administrative services in combination with the incumbent's loop.

ELI argues that USWC's definition of what is "essential" is unrealistic. ELI argues that the economics of trying to rapidly build the facilities as extensive as USWC's full network are prohibitive, which is why ALECs must use the incumbent's facilities and why a service or facility therefore can be essential even if there exists the possibility that the facility can over time be duplicated by a competitor. As a general matter, ELI believes essential services should be priced at TSLRIC.

ELI supports MCI witness Cornell's list of 34 monopoly functions or elements necessary for local exchange competition to have its greatest benefits to consumers, which should be unbundled immediately and made available at prices based upon their total service long run incremental cost (TSLRIC). ELI differs from MCI in that it believes that the loop need not be unbundled into the feeder and distribution portions at this time. TRACER also supports MCI's position, as modified by ELI.

ELI argues that, under the present USWC proposal, interconnection of a stand-alone Network Access Channel (NAC) to an ALEC's interconnector equipment would require purchase of an expanded interconnection channel termination ("EICT") element, which provides for the path from the interconnector equipment to a USWC private line within the same wire center. ELI's engineer witness Cook argues that all that is actually required is a two-wire jumper providing a path from the USWC main distribution frame to the ALEC's interconnector equipment; USWC's EICT element includes equipment that is not required. (Ex. T-87, p. 16)

TCG recommends that the Commission order USWC and GTE to provide unbundled subscriber loops and line-side interconnection as described in Mr. Cook's testimony (Ex. T-87, pp. 11-16). Other LEC network functions also may need to be unbundled. Such unbundling raises issues of technical feasibility, cost, and pricing that have not been fully explored in these proceedings. TCG recommends that the Commission order that network functions other than the local loop be unbundled and made available to competitors upon bona fide request and at rates, terms, and conditions established through good faith negotiations.

MFS also argues that unbundling of the local loop is necessary to remove a significant barrier to competition. The incumbents were able to construct their ubiquitous networks under the protection of their monopoly status, with the advantage of favorable government franchises, access to rights-of-way, and other government assistance. MFS argues that replication of the existing LEC loop network would be cost-prohibitive and accomplished on less favorable terms than the incumbents enjoyed. MFS recommends that the Commission require that incumbent LECs offer unbundled local loops priced on a reasonable cost basis using the TSLRIC method of determining costs.

MCI argues that because of the long-standing historical monopoly in local exchange service provision, the only available supplier of "parts" of the network needed to supply service is the incumbent LEC. These components must come from unbundling and the removal of resale restrictions. Not to require unbundling and resale would allow the incumbent to use its past government-granted monopoly to create unnecessary barriers to entry. It argues that unbundling and resale were how competition was able to develop in the long distance market.

MCI argues that USWC should be required to price the unbundled functions on a TSLRIC basis. Dr. Cornell describes how an unbundled functionality incorrectly priced will also impedes competition. (Ex. T-140, p. 85)

AT&T contends that the Commission should order USWC and GTE to provide an unbundled loop and a switch port, to be tariffed within 30 days of the order in this case. The prices for these services should be at TSLRIC; in no event should the total of the unbundled elements exceed the price for the bundled services (local exchange residential and local exchange business) offered by the incumbent LECs. It also argues that the testimony of Public Counsel witness Murray supports more extensive unbundling. It urges the Commission to order the level of unbundling described by AT&T witness vanMidde (Ex. 111, pp. 5-6) -- eleven basic network functions, with two of those (switching and tandem switching) being further unbundled.

The non-LEC parties support elimination of resale restrictions, with the exception that where residential service is determined to be priced below cost, resellers should not be able to resell to other than residential customers.

3. Commission Discussion and Decision

The record clearly establishes that unbundling of the local loop is essential to the rapid geographic dispersion of competitive benefits to consumers and is in the public interest. Unbundling allows customers greater opportunity to choose between a diversity of products, services, and companies. Unbundling also allows for efficient use of the public switched network, reduces the likelihood of inefficient network over-building, and ensures that competition is not held hostage by being bundled with bottleneck functions.

The Commission agrees with Public Counsel's argument that facility-based competition may be the preferred future, but the record supports the conclusion that retail competition through a strong resale market may indeed be an important step in the long term development of local competition.

The Commission also is persuaded by Dr. Cornell's testimony that no one can be certain how much of the local exchange can be supplied competitively. (Ex. T-140, p. 72) Allowing for the access to and resale of unbundled parts of the incumbent's network allows for those parts of the local exchange market that can support competition to move forward with competition without being held back by those parts of the market still characterized by monopoly.

Unbundling also holds the prospect of speeding the delivery of advanced network services such as ISDN (integrated services digital network) to customers who are not yet located along an ALEC's network. See, Cook, Ex. T-87, p. 16.

The incumbent LECs have focused their arguments against unbundling on legal, rather than policy grounds. The Commission has authority to order unbundling pursuant to RCW 80.36.140, which states in part:

> Whenever the commission shall find, after such hearing that the rules, regulations or practices of any telecommunications company are unjust or unreasonable, or that the equipment, facilities or service of any telecommunications company is inadequate, inefficient, improper or insufficient, the commission shall determine the just, reasonable, proper, adequate and efficient rules, regulations, practices, equipment, facilities and service to be thereafter installed, observed and used, and fix the same by order or rule as provided in this title.
>
> (Emphasis added.)

The first paragraph of RCW 80.36.140 (quoted in the Commission Jurisdiction section of this order) gives the Commission broad authority over rates. The second paragraph, quoted above, gives the Commission broad authority over practices and services as well. The way in which services are offered, on a bundled or unbundled basis, certainly falls within the scope of the second paragraph. See, e.g., State ex rel. American

Telechronometer Co. v. Baker, 164 Wash. 483, 491-96, 2 P.2d 1099 (1931) (citing earlier version of above quoted provision); State ex rel. Public Service Commission v. Skagit River Telephone & Telegraph Co., 85 Wash. 29, 36, 147 P. 885 (1915)(describing Commission's power to regulate public utilities as "plenary").

The Commission also agrees with Public Counsel that the declaration at RCW 80.36.300(5) that state policy promoting diversity in the supply of telecommunications services and products provides authority to order unbundling and resale. It is clear from this record that unbundling and resale are key elements in fostering diversity in supply of services and products.

The Commission does not agree with USWC's argument that the "essential facilities" doctrine applied in antitrust law is applicable in the context of Commission regulation of telecommunications companies' practices. This Commission is charged by statute to determine adequate and efficient practices to be observed by telecommunications companies, and to correct practices that tend to stifle competition, RCW 80.04.110. While reference to antitrust law by analogy may be useful in some future cases, we are not here applying the antitrust statutes. There is ample testimony in this record that requiring new entrants to duplicate all of the facilities of existing LECs is highly inefficient, and that it tends to stifle competition.

However, it appears that the Commission need not order unbundling at this time, given USWC's representation that it will file an unbundled loop tariff, and the apparent lack of an immediate need for more extensive unbundling. At this time, the Commission is satisfied with a first level of unbundling that includes an unbundled loop and an efficient line-side interconnection.

USWC shall file a tariff within 30 days of this order that offers access to a two-wire connection from an end user's premise to the USWC central office and provides for line-side interconnection -- the transmission path between the incumbent LEC's main distribution frame and the new entrant ALEC's collocated equipment. This tariff should be unbundled from redundant elements such as channel performance, remote testing, and conditioning. In addition, the line side interconnection should be equally efficient, as suggested by ELI witness Cook in his direct and rebuttal testimony. Line side interconnection involves running a two-wire jumper between the vertical and horizontal sides of the main distribution frame, cross-connecting the appropriate wire pair on the horizontal side to the alternative company's collocated equipment. (Ex. T-88, p. 6)

In support of its tariff, USWC should file a TSLRIC (total service long run incremental cost) study consistent with the cost methodology, input data, assumptions, and cost modeling recommended by Commission Staff and discussed in greater detail in the cost section of this order (Section V.). The Commission is leaving open the question of what level of contribution should be established above TSLRIC but wishes to make clear that the starting point for such discussions should be TSLRIC.

Further unbundling, beyond the unbundled loop and line-side interconnection, will likely be necessary, particularly in areas where complications with right-of-way and conduit access makes duplicating the incumbent's network not only economically, but technically, impossible. In Docket No. U-86-86, the Commission instructed USWC 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, & U-86-90, Fourth Supplemental Order (April 1987). That continues to be the Commission's policy. See, WUTC v. U S WEST Communications, Inc., Docket Nos. UT-911488,-911490,-920252, Fourth Supplemental Order (November 1993).

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. This case confirms the Commission's belief that incumbent LECs will see the benefit to unbundling, not only for advantages associated with freeing itself up to compete more effectively but also in maximizing the use of its network and the resulting revenues associated from that use.

Thus, while we would prefer that companies step forth with unbundling tariffs, for now the Commission supports a bona fide request procedure proposed by Commission Staff witness Selwyn, and endorsed by WITA.

Resale is a significant issue in the case of extensive unbundling. The Commission is not ordering extensive unbundling. USWC shall allow resale of unbundled loop and other transport service, except that residential service may not be resold as business service and local call termination may not be used to deliver toll traffic.

E. NUMBER PORTABILITY

1. Introduction

Number portability is the ability to retain a telephone number when a subscriber changes from one service provider to another (service provider portability), or when moving from one geographic location to another (geographic portability). With true number portability, the change of provider or location would be seamless, allowing users to be able to perform the same functions they were able to do previously. USWC is proposing an interim solution, using its existing service options at existing tariffed rates, until true portability can be established.

In its rebuttal testimony, USWC proposed to offer two forms of interim number portability, using remote call forwarding and direct number route indexing. The company intends to price the service at about $4 a month, plus two non-recurring charges. (Owens, Ex. T-32, p. 67)

2. Positions of the Parties

USWC argues that number portability is not an absolute prerequisite for effective competition, but agrees that number portability could provide benefits to consumers generally, and states that it will continue to pursue workable solutions. USWC argues the Commission should approve the company's interim approach on this issue, and allow USWC to file its proposed tariff for review and implementation.

GTE states that it is an active participant in current industry trials and that ELI did not prove that GTE is unwilling to provide number portability.

WITA agrees with ELI witness Ackley that number portability is an important element of intraexchange competition, and that the Commission should establish a timeline for the industry to develop a service provider number portability solution and report back to the Commission. It also recommends that the Commission establish a series of deadlines for the existing Washington Exchange Carrier Association docket considering number portability.

Commission Staff recommends that Market Expansion Line and Direct Inward Dialing be made available by USWC to interconnecting service providers at rates which reflect USWC's TSLRIC or ASIC (average service incremental cost, discussed infra) of those services, set out on confidential page 45 of Commission Staff witness Wilson's rebuttal testimony (Ex. T-155). Public Counsel supports Staff's recommendation.

TCG concedes that true service number portability is not yet feasible. The lack of number portability, however, has a profound impact on the ability of TCG and other ALECs to market their services to existing LEC customers. Most customers are unwilling to change providers if they cannot keep their numbers. Interim solutions have serious and substantial flaws. TCG therefore argues that incumbent LECs should be required to provide interim number solutions for their former customers who change service providers without charge, until a permanent number portability solution has been developed and deployed. Alternately, the service should be available at TSLRIC. TCG argues that the lack of number portability arises because of the way LEC networks were originally configured, and that LECs should not be directly compensated for more than their costs of mitigating a barrier to competition -- a barrier from which they benefit and for which they are responsible.

ELI argues that the availability of true local service provider number portability is a necessary precondition for effective local service competition. ELI witness Ackley testified that 86% of ELI's sales contacts terminated as soon as the customer found out they had to change their telephone number. [TR., p. 1227, ll. 18-21] ELI recommends that the Commission order the parties to cooperate to develop a permanent solution, and report to the Commission within six months. ELI endorses the USWC offering but believes the service should be at the lowest possible price to mitigate for the technical deficiencies and the economic penalty imposed on an ALEC for not being able to efficiently offer its customer the ability to retain its telephone number when switching service providers.

MFS witness Schultz testified to similar marketing problems caused by the lack of number portability. MFS argues that the Commission should order the incumbents, on an interim basis, to provide ALECs with Co-Carrier Call Forwarding ("CCF") as a form of number portability. It argues that the New York Public Service Commission has ordered CCF, and that CCF, as Mr. Schultz described, has numerous advantages over "Flexible DID" and other remote call forwarding alternatives. It argues that USWC provides a conceptually similar service, "call forwarding - variable," and that the Commission should order USWC to provide this service to ALECs at cost. However, MFS also believes that a $4.00 monthly recurring fee per redirected business line (the negotiated interim rate in New York) is an acceptable interim solution.

MCI also argues that the availability of local number portability is essential to the development of effective competition. Their witness Mr. Traylor testified about a Gallup survey performed for MCI on a national basis that showed that 83% of those surveyed considered it important to retain their telephone numbers when changing service providers. [TR., p. 1683] MCI witness Cornell testified that allowing USWC to charge retail rates for its interim solutions would create an incentive for it to try to delay provisioning true service provider number portability, because it benefits commercially from the sales and because delay will impede entry. Dr. Cornell recommends that the cost of USWC's interim proposals be recovered either by setting the price at cost (TSLRIC), with no markup, or by a surcharge on all telephone numbers.

3. Commission Discussion and Decision

The Commission is persuaded that true number portability is an essential condition for effective local exchange competition just as it has been for the "800" number services market. The Commission also believes that in the interim, less than perfect number portability needs to be available. USWC's offer of its two services is appropriate. However, the rate for those services should be set at the company's incremental costs. Interim number portability is a stopgap measure until permanent number portability can be established. Thus, there is no reason for USWC to recover common costs from this service. USWC shall file its interim number portability tariff within 30 days of the date of this order. In the absence of an incremental cost study for interim number portability services, the Commission will accept the rates set forth by Commission Staff witness Wilson. (Ex. T-155, p. 45)

All parties on brief indicate a willingness to work on a permanent true number portability solution. The Commission asks that the parties, through the WECA docket and other forums, review the various trials around the country and to return to the Commission with a recommendation by July 1, 1996, for immediate implementation and funding of a true local number portability solution.

F. DIRECTORY LISTINGS, DIRECTORY ASSISTANCE, OTHER DATA BASES

1. Positions of the Parties

USWC suggests that ALECs have several options for listing their customers' information in the U S West Direct directory, including negotiating with U S West Direct and purchasing USWC's listing services. (Owens, Ex. T-10, p. 50) This new listing service provides for a listing in USWC's voice and electronic directory assistance databases at a price of $0.75/month per business listing and $0.60/month per residential listing, plus a $5.00 non-recurring charge for each listing added or changed. (Ex. T-32, p. 56) USWC further argues that directory assistance and listings in directory databases and publications are not essential facilities because there are alternative providers.

GTE states that it plans to include new LEC customers in its directories and directory assistance databases because of the value that more complete information provides its customers. [Beauvais, TR., p. 1872, ll. 1-3]] GTE indicates that it is willing to enter into contracts with ALECs regarding the specifics of directory listings and the provision of directories.

The ALECs argue that its not economical to produce a separate published directory. They want their customers to be included in database, white pages, and simple listings in yellow pages, plus they want USWC and GTE to supply copies of the directories for distribution. These services should be provided free or at avoided costs. These parties, as well as Commission Staff, believe that USWC and GTE should provide directory assistance on the same terms and conditions that they provide directory assistance to other incumbent LECs.

Public Counsel wants consumers to have seamless access to directory assistance and white pages. Public Counsel recommends that the Commission mandate a unified white pages directory and ensure that USWC makes published directories available on an incremental cost basis.

MFS argues that directory listings should be free because incumbent LECs gain value in having a complete listing. USWC appears to agree with the notion that listings add value when it represented that U S WEST Direct's goal is to have complete and accurate listings of all of the consumers and businesses covered by its directories, regardless of whether a particular customer is served by USWC or an ALEC." (Owens, Ex. T-10, p. 50)

WITA states that the independent LECs are required to publish directories, and that all customers should be included in white page listings. It argues that access to directory assistance and data bases and the duty to publish one's own directory are items that should be competitively neutral, implying that they should be offered on the same terms and conditions.

2. Commission Discussion and Decision

Commission rule requires that a telephone directory be regularly published for each exchange, listing the name, address, and telephone number of the subscribers who can be called in that exchange. Additionally, the rule requires that subscribers be furnished with the directory or directories that contain listings for all subscribers who can be called toll free from that exchange. WAC 480-120-042

The Commission agrees that there are alternatives to published directories and directory assistance. However, there is a strong public and consumer interest in having a complete listing of subscribers for each local calling area available to subscribers. Commission rules enforce this interest by requiring that subscribers be provided the directories necessary to access all numbers within a local calling area. In the absence of a complete, unified listing, the incumbent LECs would have to acquire directories from every other telephone company providing service in that calling area and provide each subscriber with a set of such directories. USWC witness Owens agreed in cross examination that independent directories published by each ALEC will cause "some customer confusion." [TR., p. 341, ll. 15-16] We do not believe that a situation where multiple companies distribute different kinds of directories to all telephone customers in a calling area is practical, economically feasible, or desirable. Thus, while USWC may argue somewhat persuasively that directories and directory assistance are not essential, we do believe a unified directory database is essential.

To ensure that USWC, GTE, and all other LECs can continue to be in compliance with WAC 480-120-042, USWC and GTE must include all listings of telephone subscribers submitted to them by companies serving the same area served by the directory or database. This database of directory listings shall be the same that is provided to the company's directory publishing subsidiaries and other directory publishers. The Commission has no basis to determine if the rates for listings put forth by USWC are fair, just, and reasonable. When asked, the USWC witness did not know the incremental cost of the service. [Owens, TR., p. 278, l. 20] However, given that there is value associated with a complete listing and that USWC and GTE are required to provide complete listings to its subscribers, the Commission believes that simple listings in the published directories should be provided, without additional charge, as "in kind" compensation to the company providing the subscriber information. The Commission will not require GTE and USWC to supply extra copies of their directories to the ALECs or their customers. However, given that these directories also contain extensive advertisements, GTE and USWC have every incentive to ensure broad distribution of their publications.

Other directory assistance, line identification data base (LIDB), and operator services should be provided by USWC and GTE to ALECs on the same terms and conditions as they are provided to other incumbent LECs.

G. THE COMPLAINTS

Three complaints are consolidated with USWC's tariff filing. TCG filed a complaint against USWC, and TCG and ELI separately filed complaints against GTE. The three complaints are nearly identical.

1. Allegations and Relief Sought

The complaints allege two causes of action, one claiming unreasonable prejudice, disadvantage, and discrimination, and the second claiming unreasonable and anticompetitive rates and practices.

a. Factual Allegations

The principal factual allegations are:

1. The incumbents are currently the de facto monopoly providers of switched local services within their Washington exchanges.

2. To provide switched local exchange service, the complainants must interconnect with the incumbents' switched networks and have mutual compensation arrangements with the incumbents for the interconnection.

3. During the summer of 1994, the complainants approached the incumbents to negotiate agreements for interconnection of the networks. The complainants proposed "bill and keep" at the end office as a means of mutual compensation for the interconnection.

4. [Re: USWC] USWC rejected TCG's proposal and offered the following counter-proposal:

a) TCG would pay USWC more to complete a call on USWC's network than USWC would pay TCG to complete a call on its network;

b) TCG would pay USWC switched access rates of approximately $0.021/minute of use, plus a $0.032/minute "lost contribution charge" to complete local calls, which creates a charge for local interconnection which is higher than USWC's current IXC access charges;

c) The $0.032/minute charge is designed to compensate USWC for lost profits on the sale of complex business line service, regardless of whether USWC's sales of that service actually decline; and

d) the $0.032/minute charge would be reduced only if USWC is allowed to increase residential rates, and would be eliminated entirely only when USWC is allowed to increase residential rates by 250%.