ORDER NO. 97-290

ENTERED AUG 04 1997

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

ARB 16

In the Matter of the Petition of AT&T Wireless Services, Inc., for Arbitration of Interconnection Rates, Terms, and Conditions Pursuant to the Telecommunications Act of 1996.	)))))	ORDER

Procedural History

On October 3, 1996, AT&T Wireless Services, Inc. (AWS), served U S WEST Communications, Inc. (USWC), with a written request under the Telecommunications Act of 1996 (47 U.S.C. §151 *et seq.*) (the Act). The request asked USWC to terminate AWS's existing interconnection contract and negotiate a new agreement for interconnection, services, and network elements under the Act to facilitate AWS's provision of wireless services in Oregon. On March 6, 1997, AWS filed a timely petition for arbitration with the Commission. In accordance with §252(b)(1) of the Act, AWS requested the Commission to resolve all the unresolved issues raised in AWS's petition. Ruth Crowley, an Administrative Law Judge with the Commission, was designated to act as Arbitrator.

On April 1, 1997, USWC filed a Response and Motion to Dismiss. On April 2, 1997, the parties and the Arbitrator held a telephonic prehearing conference. During the conference, the parties agreed to the schedule for this docket, including an opportunity for AWS to reply to USWC's motion to dismiss. On April 25, 1997, the Arbitrator issued a ruling denying USWC's motion to dismiss and determining that all the issues for which USWC requested dismissal were proper for arbitration under the Act. On May 9, 1997, another prehearing conference was convened by telephone to discuss procedures, discovery issues, and related topics.

An evidentiary hearing in this matter was conducted on May 20, 1997. After the hearing, AWS filed five exhibits (AWS 15 through AWS 19). Through stipulation or by ruling of the Arbitrator, these items were admitted into evidence. The parties filed briefs on June 13, 1997. The Arbitrator's Decision issued on July 3, 1997, and the parties filed comments regarding that decision on July 14, 1997.

Statutory Authority

This arbitration was conducted under 47 U.S.C. §252(b). The standards for arbitration are set forth in 47 U.S.C. §252(c):

> In resolving by arbitration under subsection (b) any open issues and imposing conditions upon the parties to the agreement, a State commission shall--
> (1) ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251;
> (2) establish any rates for interconnection, services, or network elements according to subsection (d); and
> (3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

On August 8, 1996, the Federal Communications Commission (FCC) issued rules pursuant to 47 U.S.C. §§251 and 252. 47 C.F.R. § 51.100 *et seq.*[1]

On October 15, 1996, the Eighth Circuit Court of Appeals stayed operation of the FCC rules relating to pricing and the "pick and choose" provisions.[2] *Iowa Utilities Board v. Federal Communications Commission et al.,* Case Nos. 96-3321 et seq. (8th Cir., October 15, 1996) (Order Granting Stay Pending Judicial Review). On November 12, 1996, the United States Supreme Court issued a ruling which declined to lift the stay. The stay will remain in effect until the appeals are decided on the merits. Because of the stay, I have considered the FCC pricing rules to be advisory and not binding on this arbitration.

On November 1, 1996, the Eighth Circuit Court of Appeals issued an order partially lifting its October 15 stay with respect to Commercial Mobile Radio Services (CMRS) issues. The Court determined that the stay should be lifted with respect to reciprocal compensation set forth in FCC Rules 51.701, 51.703, and 51.717. That November 1 order made these FCC rules applicable to this arbitration proceeding.

On July 18, 1997, the Eighth Circuit filed its decision in this matter. The court vacated the following provisions: 47 C.F.R. §§ 51.303, 51.305(a)(4), 51.311(c), 51.315(c)-(f) (vacated only to the extent this rule establishes a presumption that a network element must be unbundled if it is technically feasible to do so), 51.405, 51.505-515 (inclusive), 51.701-51.717 (inclusive, except for 51.701, 51.703, 51.709(b), 51.711(a)(1), 51.715(d), and 51.717, but only as they apply to CMRS providers), 51,809; First Report and Order, ¶¶ 101-103, 121-128, and 180. The court also vacated the proxy range for line ports used in the delivery of basic residential and business exchange services established in the FCC's Order on Reconsideration, dated September 27, 1996.

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[1] Unless otherwise indicated, references to the "FCC Order" are to FCC 96-325.

[2] The provisions of the rules subject to the stay are 47 C.F.R. §§51.501-515 (inclusive), 51.601-611 (inclusive), 51.701-717 (inclusive), the default proxy range set forth in the order for line ports, and 51.809.

Commission Review

Section 252(e)(1) of the Act requires that any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the state commission. Section 252(e)(2)(B) provides that the state commission may reject an agreement (or any portion thereof) adopted by arbitration only "if it finds that the agreement does not meet the requirements of section 251, including the regulations prescribed by the [FCC] pursuant to section 251, or the standards set forth in subsection (d) of this section." Section 252(e)(3) further provides:

> Notwithstanding paragraph (2), but subject to section 252, nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of state law in its review of an agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements.

Commission Conclusion

The Commission has reviewed the Arbitrator's Decision and the parties' comments under the standards set out above. Except as indicated below, we conclude that the Arbitrator's Decision comports with the requirements of the Act, applicable FCC rules, and relevant state law and regulations. We have also provided clarification or additional explanation of the Arbitrator's Decision where appropriate.

USWC Exceptions

Paging Issue (Issue C): The Act mandates reciprocal compensation for transport and termination. Because, according to USWC, pagers do not terminate traffic, they are not eligible for mutual compensation under the Act. USWC's argument that paging providers do not terminate traffic is unconvincing. As the Arbitrator's Decision points out, CMRS providers are considered telecommunications carriers under the Act. The FCC Report and Order specifically state that paging providers, as telecommunications carriers, are entitled to reciprocal compensation for transport and termination of local traffic and are not required to pay charges for traffic originating on other carriers' networks. The Eight Circuit decision left those portions of the Report and Order intact. We decline to change the Arbitrator's Decision on Issue C.

Electronic Interfaces for Operational Support Systems (OSS) (Issue D): USWC argues for modification of the Arbitrator's Decision to the extent that it requires USWC to provide access to OSS and maintenance and repair electronic interfaces. USWC contends that this issue was not properly raised in the Petition, since it was raised, if at all, by inclusion of certain proposed language in the AWS proposed contract attached to the Petition. USWC concludes that this issue should not be considered. Moreover, USWC argues that the Act does not require it to provide access to OSS for interconnection (as opposed to access for resale and access to unbundled elements). USWC is amenable to working on an electronic

interface for AWS as an interconnector, but requests clarification that it is not required to do so by federal law.

We consider that inclusion of the language referring to OSS in AWS's proposed contract, attached to the Petition, raises the issue for purposes of this Arbitration. As to USWC's argument that there is a distinction between OSS for interconnection and OSS for access to unbundled elements, we disagree. Under the Act, and as held by the Eighth Circuit, OSS constitutes a network element and as such is subject to the unbundling requirements of §251(c)(3) of the Act. The purpose for which a competitive provider employs OSS is irrelevant to this legal requirement. We decline to change the Arbitrator's Decision on this issue.

Effective Date for Reciprocal Compensation (Issue A(4)): USWC contends that the Arbitrator's Decision setting the effective date for reciprocal compensation at the date of filing the interconnection request rather than the date when the stay was lifted, is inconsistent with the decision in ARB 7, Western Wireless's petition. We conclude that the legal analysis set forth in the Arbitrator's Decision is correct and decline to change it.

Access to Poles, Ducts, Conduits, and Rights-of-Way (Issue E): USWC does not contest this part of the decision but asks that the Order clarify that access is to be granted only if it is in compliance with safety regulations. The Arbitrator's Decision at pp. 18-19 is modified by the addition of the text below in double brackets:

Resolution: ***Duty to afford access to poles, ducts, conduits, and rights of way is reciprocal; USWC may keep spare capacity for maintenance and administrative purposes based on a bona fide development plan; USWC must take reasonable steps to expand capacity where necessary. [[Access to tops of poles must be consistent with all relevant electric and safety regulations.]]***

* * * * *

USWC is to allocate space on its poles, etc., in a nondiscriminatory way, on a first come, first served basis. [[Access to tops of poles shall be consistent with all electric and safety regulations.]] USWC may reserve reasonable space for its maintenance and administrative needs, in accordance with a bona fide development plan.

AWS Exceptions

Bill and Keep (Issue A(1)): The Arbitrator's Decision rejected bill and keep for AWS. AWS argues that its cost study shows that transport and termination costs are in balance even if traffic is not. This is the same argument AWS presented to the Arbitrator in briefs. We do not believe that AWS's reasoning is consistent with the Act and Order. AWS also complains that the Arbitrator's Decision treats AWS differently from all other CLECs who have requested bill and keep.

We conclude that the Arbitrator's Decision with respect to bill and keep is correct. The decision reviews our finding from Order No. 96-021 (CP 1, 14, and 15) that bill and keep is appropriate where traffic is in balance, and recites AWS's admission that traffic between ILECs and CMRS providers is not in balance. Even assuming, for the sake of argument, that we were willing to stretch our classification of appropriate situations for bill and keep to include situations in which costs were in balance, we would not accept an unreviewed cost study such as the one AWS submitted in this proceeding.

Tandem Issue (Issue A(2)): AWS argues, as it did in its briefs, that its Mobile Switching Center (MSC) is equivalent to a tandem, in terms of geographic coverage and functionality. AWS objects that the Arbitrator's Decision is based on the Commission's decision in ARB 7.

We adopt the reasoning given in the Arbitrator's Decision for rejecting AWS's argument that the MSC is equivalent to a tandem. On review, we find that the record in this case supports the findings with respect to the MSC in the Arbitrator's Decision.

Reciprocal Compensation if Bill and Keep is Not Adopted (Issue A(2)): AWS asks for clarification as to what mileage band applies for the transport element. The Arbitrator's Decision did not specify a mileage band. AWS advocated a 25-mile band for transport (equal to the weighed average transport distance reported by USWC for all mileage bands in other USWC states).

We adopt AWS's proposed mileage band. We modify the Arbitrator's Decision, at p. 5, to add the text in double brackets:

AWS proposes to pay USWC the rates established in UM 351, Order No. 96-283, Revised Appendix C, as modified by UM 844, Order No. 97-239, Appendix C. AWS will pay USWC the tandem rate for traffic terminated at USWC's tandem, plus average transport, and the end office rate for traffic terminated at USWC's end office. [[AWS proposes a 25-mile band for transport (equal to the weighed average transport distance reported by USWC for all mileage bands in other USWC states)]].

We modify the Arbitrator's Decision, at p. 8, adding the words in double brackets:

The Commission has spent years working out a methodology for costing and pricing, and the dockets named above are the result of that work. The methodology is established and reviewable. USWC's methodology and results are unreviewed and the inclusion of a depreciation reserve deficiency is a departure from standard Commission costing/pricing policy. I will adopt the UM 351 rates (set forth in Revised Appendix C to Order No. 96-283) as modified by UM 844, Order No. 97-239, Appendix C, for transport and termination between the parties. [[I also adopt a 25-mile band for transport, as AWS proposes.]]

Effective Date (Issue A(4)): AWS agrees with the Arbitrator's Decision's assignment of October 3, 1996, as the effective date for reciprocal compensation, but argues that the effective date determination is tied to what rate should apply between the date of the request for interconnection and the effective date of the arbitrated agreement. This issue is contingent on our taking jurisdiction of the contract between USWC and AWS which may have expired on Dec. 31, 1996, or have been extended its "evergreen" clause by virtue of the parties' omission of a written termination. The Arbitrator did not take jurisdiction over the parties' contract dispute. We adopt the Arbitrator's reasoning and find that arbitration under the Act is not the proper forum to resolve this contract dispute.

Access to Poles, Ducts, Conduits, and Rights-of-Way (Issue E): AWS argues that the Arbitrator's Decision allowing USWC access to AWS's poles, ducts, conduits, and rights-of-way is inconsistent with the Commission's decision in ARB 3/6. There the Commission relied on the Act and Order to conclude that access rights differ for incumbents and new entrants.

After reviewing the relevant sections of the Act, we conclude that AWS's argument is correct. The right to obtain access does not extend to incumbent local exchange carriers. Accordingly, AWS is not required to provide USWC with access to poles, ducts, conduit, and rights-of-way owned or controlled by AWS. The Arbitrator's Decision at p. 18 is modified to include the word in double brackets:

Resolution: ***Duty to afford access to poles, ducts, conduits, and rights of way is [[not]] reciprocal; USWC may keep spare capacity for maintenance and administrative purposes based on a bona fide development plan; USWC must take reasonable steps to expand capacity where necessary. Access to tops of poles must be consistent with all relevant electric and safety regulations.***

The first paragraph on p. 19 of the Arbitrator's Decision is replaced by the following paragraph:

Section 251(b)(4) of the Act requires all local exchange carriers to provide access to poles, ducts, and rights-of-way. However, §251(b)(4) also specifies that access be provided on "rates, terms, and conditions that are consistent with section 224." Section 703 of the Act amends Section 224. Section 224(f)(1) provides that "[a] *utility* shall provide a cable television system or any *telecommunications carrier* with non-discriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it." (Emphasis added.) The definition of "utility" in section 224(a)(1) is amended to include "*any person who is a local exchange carrier* or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications." (Emphasis added.) Section 703 further amends §224(a)(5) to provide that "[f]or purposes of this section, the term "telecommunications carrier" (as defined in section 3 of this Act) *does not include any incumbent local exchange carrier* as defined in section 251(h)." (Emphasis added.)

Contract Language (Issue F): The Arbitrator's Decision asks AWS to prepare a contract "within the scope of what is contemplated by the Act and the FCC Order." AWS requests clarification regarding what in its agreement is beyond the scope of the Act.

Except as specifically provided in the Arbitrator's Decision, we find no particular provision of AWS's agreement beyond the scope of the Act and Order. We conclude that the Arbitrator's language was meant merely as a cautionary statement.

Service Quality Rules (Issue G): AWS recognizes that our other decisions have declined to impose service quality standards on USWC. AWS requests, however, that our order include the language from ARB 3/6 and several other arbitrations to the effect that USWC must prepare detailed specifications for showing its existing quality and performance standards.

We find AWS's request reasonable and will add the following language to the Arbitrator's Decision at p. 22. This paragraph will be the final paragraph in the section on Issue G:

However, §251(c)(3) of the Act requires local exchange carriers to provide unbundled network elements on a reasonable and nondiscriminatory basis at levels of quality at least equal to the quality the carrier provides itself. Therefore, USWC shall provide AWS current written objective measures of quality for: 1) billing; 2) operator assistance; 3) preorder, order, provisioning, and maintenance/repair; 4) network quality; and 5) provisioning of interconnection and unbundled elements, within 30 days of the effective date of the agreement.

Physical Interconnection (Other Issues): AWS objects to the Arbitrator's adoption of USWC's proposed limits on the length of facilities that USWC must construct. AWS argues that the limitation is inconsistent with the Act and past Commission decisions. In previous decisions (CP 1, 14, 15; ARB 3/6) the Commission found that USWC must share the cost of meet point facilities for interconnection, and the parties must negotiate mutually acceptable meet points. Under the Act (§251(c)(2), (3)) and the Order (¶553), meet point arrangements are technically feasible and within the scope of the ILEC's interconnection obligations. No limit on the length of facilities is expressed.

We find that AWS's argument is correct. We modify the Arbitrator's Decision at p. 25 by adding the bracketed word:

Physical Interconnection: ***Parties to negotiate mid-span meet arrangements and points of interconnection; [[no]] limit imposed on length of facilities USWC must construct; compensation necessary; direct trunks to be established when traffic between a USWC end office and the AWS switch exceeds 512 CCS.***

The parties should negotiate meet points for interconnection and traffic exchanged on two-way trunks. USWC's proposed standard for length of facilities it must construct as part

of a mid-span arrangement is rejected. I adopt USWC's proposal to establish direct trunks when traffic between its end office and the AWS switch exceeds 512 CCS.

ORDER

IT IS ORDERED that the Arbitrator's decision in this case, attached to this order, is adopted as amended herein.

Made, entered, and effective AUG 0 4 1997.

Roger Hamilton
Chairman

Ron Eachus
Commissioner

Joan H. Smith
Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements of OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.

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ISSUED July 3, 1997

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

ARB 16

In the Matter of the Petition of AT&T Wireless Services, Inc., for Arbitration of Interconnection Rates, Terms, and Conditions Pursuant to the Telecommunications Act of 1996.	)))))	ARBITRATOR'S DECISION

Procedural History

On October 3, 1996, AT&T Wireless Services, Inc. (AWS), served U S WEST Communications, Inc. (USWC), with a written request under the Telecommunications Act of 1996 (47 U.S.C. §151 *et seq.*) (the Act). The request asked USWC to terminate AWS's existing interconnection contract and negotiate a new agreement for interconnection, services, and network elements under the Act to facilitate AWS's provision of wireless services in Oregon. On March 6, 1997, AWS filed a timely petition for arbitration with the Commission. In accordance with §252(b)(1) of the Act, AWS requested the Commission to resolve all the unresolved issues raised in AWS's petition. Ruth Crowley, an Administrative Law Judge with the Commission, was designated to act as Arbitrator.

On April 1, 1997, USWC filed a Response and Motion to Dismiss. On April 2, 1997, the parties and the Arbitrator held a telephonic prehearing conference. During the conference, the parties agreed to the schedule for this docket, including an opportunity for AWS to reply to USWC's motion to dismiss. On April 25, 1997, the Arbitrator issued a ruling denying USWC's motion to dismiss and determining that all the issues for which USWC requested dismissal were proper for arbitration under the Act. On May 9, 1997, another prehearing conference was convened by telephone to discuss procedures, discovery issues, and related topics.

Evidentiary hearings in this matter were conducted on May 20, 1997, for the purpose of conducting cross examination of the prefiled testimony of several witnesses in the proceeding. After the hearings, AWS filed five exhibits (AWS 15 through AWS 19). Through stipulation or by ruling of the Arbitrator, these items were admitted into evidence.

Statutory Authority

This proceeding is being conducted under 47 U.S.C. §252(b). The standards for arbitration are set forth in 47 U.S.C. §252(c):

> In resolving by arbitration under subsection (b) any open issues and imposing conditions upon the parties to the agreement, a State commission shall--
> (1) ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251;
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> (3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

On August 8, 1996, the Federal Communications Commission (FCC) issued rules pursuant to 47 U.S.C. §§251 and 252. 47 C.F.R. § 51.100 *et seq.*[1]

On October 15, 1996, the Eighth Circuit Court of Appeals stayed operation of the FCC rules relating to pricing and the "pick and choose" provisions.[2] *Iowa Utilities Board v. Federal Communications Commission et al.*, Case Nos. 96-3321 et seq. (8th Cir., October 15, 1996) (Order Granting Stay Pending Judicial Review). On November 12, 1996, the United States Supreme Court issued a ruling which declined to lift the stay. The stay will remain in effect until the appeals are decided on the merits. Because of the stay, I have considered the FCC pricing rules to be advisory and not binding on this arbitration.

On November 1, 1996, the Eighth Circuit Court of Appeals issued an order partially lifting its October 15 stay with respect to Commercial Mobile Radio Services (CMRS) issues. The Court determined that the stay should be lifted with respect to reciprocal compensation set forth in FCC Rules 51.701, 51.703, and 51.717, based on a motion filed by AirTouch asserting that the stay was never meant to apply to CMRS interconnection. That November 1 order made these FCC rules applicable to this arbitration proceeding.

USWC argues that because of the stay, the Commission may not use or rely on the FCC's default and proxy prices for unbundled network elements and for the avoided cost discount for resale services.

USWC further argues that the Commission should not hesitate to look to and rely on state law and policy where there is no inconsistency with federal law. The Act, USWC contends, recognizes the importance of the state commissions' role in implementing congressional intent embodied in the Act, and explicitly preserves the right of state commissions to consider and apply state law where not inconsistent with the Act. *See, e.g.,*

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[1] Unless otherwise indicated, references to the "FCC Order" are to FCC 96-325.

[2] The provisions of the rules subject to the stay are 47 C.F.R. §§51.501-515 (inclusive), 51.601-611 (inclusive), 51.701-717 (inclusive), the default proxy range set forth in the order for line ports, and 51.809.

§§252(e)(2)(A)(ii), 252(e)(3), 252(f)(2), 253(b), 253(c). The Act also preserves the Commission's authority to take action consistent with the public interest (§253(b)).

Issues Presented for Arbitration

The parties have presented the following issues for arbitration:

Issue A. Reciprocal Compensation for Termination and Transport

This issue focuses on four separate questions:

1. Should the Commission order a bill and keep arrangement between AWS and USWC for transport and termination of local traffic?

2. If bill and keep is not adopted, what are the appropriate rates each carrier should pay the other for transport and termination of local traffic?

3. If bill and keep is not adopted, what are the appropriate rates AWS should pay USWC for delivery of transit traffic?

4. On what date should the reciprocal compensation mechanism begin to apply?

1. Bill and Keep

AWS: AWS contends that bill and keep arrangements avoid the waste of resources resulting from a monetary exchange of roughly equal amounts of compensation. AWS points out that USWC witness Don Mason testified that "[USWC has] advocated if it's within 5 percent either way, that bill and keep would be appropriate . . . ." Mr. Mason also testified that all of USWC's interconnection arrangements with independent local exchange companies are on a bill and keep basis, even when balance of traffic is outside the 5 percent threshold. AWS requests an agreement that is commensurate with the terms USWC offers to other carriers.

AWS argues that imposing bill and keep on an interim basis for the interconnection agreement between AWS and USWC is consistent with the prior actions of this Commission. To date, according to AWS, the Commission has never refused a request for bill and keep. Bill and keep, according to AWS, has become the default arrangement between incumbent local exchange carriers (ILECs) and competitive local exchange carriers (CLECs). Moreover, AWS argues that its costs greatly exceed USWC's costs, so USWC should not be concerned about relative traffic levels. Competitive neutrality also requires bill and keep.

AWS argues that exchange of traffic between AWS and USWC is no different from exchange of traffic between AECs and should be treated the same. This Commission has ordered interim bill and keep arrangements between USWC and CLECs including MCI, Electric Lightwave, Inc., and TCG. *See* Order No. 96-021, dockets CP 1, 14, and 15; Order

No. 96-325, docket ARB 2; Order No. 97-003, docket ARB 3/6. These decisions were made without reference to specific traffic studies.

The FCC order discusses the use of bill and keep where traffic is in balance. However, AWS argues that its discussion has an essential underlying assumption that the parties with the same amount of traffic also have the same costs. *See* FCC Order ¶1111. Furthermore, according to AWS, the FCC order does not specifically state that it relied on a review of wireless costs. Thus AWS argues that bill and keep is appropriate where the traffic multiplied by the cost on each side is the same.

AWS asserts that the only factual question in the present arbitration with respect to bill and keep is whether AWS and USWC have total costs that would be roughly in balance even where more traffic is terminated on USWC's network than on AWS's network. AWS argues that its evidence on this point is straightforward. Its witness, Dr. Thomas Zepp, showed that even if one assumes a traffic balance of 80/20, with mobile to land traffic exceeding land to mobile by a ratio of four to one, the costs are still roughly in balance or are slightly higher on AWS's side. Dr. Zepp also reported that AWS's wireless traffic sensitive costs per minute were substantially higher than comparable costs per minute for USWC. AWS notes that the FCC has acknowledged that the CMRS costs of termination is generally considered higher than the cost of LEC termination (FCC Order ¶ 1117).

USWC: USWC argues that bill and keep should not be ordered in this arbitration, because traffic is substantially out of balance. In approximately 40 agreements between CMRS providers and USWC, the CMRS providers have agreed that land to mobile traffic is one fourth or less of total traffic. USWC argues that AWS attempts to insert a new standard into the FCC Order by assuming that bill and keep is appropriate not only where traffic is in balance but where the traffic multiplied by the costs on both sides are the same. USWC also challenges AWS's cost study because it is insufficient to justify a departure from the presumption of symmetrical compensation. Moreover, USWC asserts that AWS has included the costs of its cell sites in its cost calculations. USWC points out that according to the record, AWS's cell sites are not switches but the equivalent of USWC's local loop and should not be included as part of AWS's costs.

Resolution: ***Bill and keep rejected.*** Where we have approved interim bill and keep rates in past arbitrations, we have done so on a finding that traffic would be within a few percentage points of equilibrium. *See* Order No. 96-021 at 55. That finding applies only to exchange of traffic between ILECs and CLECs. AWS asks us to treat CMRS carriers no differently from other CLECs, but as AWS admits, that traffic is not in equilibrium between CMRS carriers and ILECs.

AWS also notes that the Commission has never refused a request for bill and keep in an arbitration. However, the only other set of wireless/ILEC arbitration petitions we received did not request bill and keep. *See* ARB 7 and 8, Western Wireless petitions. The remaining wireless/ILEC interconnection agreements we have processed have been negotiated agreements.

AWS asserts that even with the imbalance in traffic exchange, its costs and USWC's are in equilibrium or AWS's costs are slightly higher. AWS's cost study has not been reviewed, even informally, by Commission Staff, and I am hesitant to accept it without review. I am especially concerned that AWS's cost study may include inappropriate inputs, such as cell sites. Given the uncertainty about AWS's cost study, I believe it is inappropriate to accept the interpretation urged by AWS, that the FCC Order has an essential underlying assumption that parties with the same amount of traffic also have the same costs. Therefore, I reject bill and keep for this arbitration.

2. Appropriate Symmetrical Rates

AWS argues that if the Commission does not adopt bill and keep, it should base rates for transport and termination on relevant UM 351 rates (subject to modification in UM 844). AWS is willing to have the Commission use USWC costs as a proxy for AWS and to set AWS's rates for transport and termination at a symmetrical amount. AWS believes that the termination rate applicable to termination of traffic by AWS should be the USWC tandem and transport rate.

Under AWS's proposal, bill and keep would apply where traffic is in balance. Traffic balance should be presumed if the dollar difference in statewide obligations are within 10 percent of each other. AWS argues that traffic balances should be based on statewide differences in dollar obligations instead of minutes of use, because the costs of transit traffic and 2B traffic are less than for 2A traffic. The net payment would be made by the carrier with the larger obligation.

AWS proposes to pay USWC the rates established in UM 351, Order No. 96-283, Revised Appendix C, as modified by UM 844, Order No. 97-239, Appendix C. AWS will pay USWC the tandem rate for traffic terminated at USWC's tandem, plus average transport, and the end office rate for traffic terminated at USWC's end office.

Tandem Issue. For USWC traffic terminated at AWS's Mobile Switching Center (MSC), AWS proposes that it should be compensated at the tandem rate. AWS bases its argument on the following passage from the FCC Order at ¶1090:

> [S]tates shall also consider whether new technologies (e.g., fiber ring or wireless networks) perform functions similar to those performed by an incumbent LEC's tandem switch and thus, whether some or all calls terminating on the new entrant's network should be priced the same as the sum of transport and termination via the incumbent LEC's tandem switch. Where the interconnecting carrier's switch serves a geographic area comparable to that served by the incumbent LEC's tandem switch, the appropriate proxy for the interconnecting carrier's additional costs is the LEC tandem interconnection rate.

AWS argues that its MSC can and does terminate calls to any physical location to which USWC's tandem can terminate calls. In fact, according to AWS, its MSC has a larger

geographic coverage than USWC's tandem switch, because the MSC can deliver calls across different LATAs and USWC's tandem cannot.

In addition to geographic comparability, the FCC Order mandates consideration of the functions new technologies perform as well. AWS points out that this Commission also requires a consideration of the functionality of the competitive carrier's switch to determine the structure of reciprocal compensation rates (Order No. 96-324, ARB 1, at 4).

AWS contends that its MSC provides functions similar to a USWC tandem switch. The MSC switches calls from cell site to cell site, switches calls from one MSC to another MSC, routes calls to a landline telephone in the least cost manner, and routes calls through interexchange carriers for delivery to roaming customers.

AWS cites further examples of how the IS/41 tandem located in the MSC provides tandem switch functions. For instance, for a land to mobile call, the call travels from the original LEC access tandem to an MSC. The MSC, using the Home Location Register, which tracks the mobile customer's location, routes the call to the appropriate MSC, IXC, or LEC access tandem. For the duration of the call, two connections are maintained: the original connection from the LEC access tandem to the MSC, and the new connection between the MSC and a second MSC, IXC, or LEC access tandem. When this occurs, according to AWS, the MSC is performing a fundamental tandem function by establishing a shared communication path between two switching offices through a third switching office, the tandem switch. AWS's IS/41 tandem also maintains shared trunk groups between MSCs for handoff purposes and performs transit functions, both types of traditional tandem functions that USWC's tandem switch also performs.

AWS asserts that USWC's position is that the MSC is more like an end office than a tandem switch. AWS points out that the average MSC cell site distance for AWS is commensurate with the standard USWC interoffice distance. No USWC local loop comes close to this average distance between AWS's MSCs and cell sites. Moreover, AWS's MSC and cell site costs are traffic sensitive, while according to FCC Order ¶1057, local loop costs are not traffic sensitive. Furthermore, AWS's MSC provides a transit function, again like a tandem. When a non AWS wireless customer roaming in AWS's major trading area (MTA) makes a mobile to land call, AWS argues that involves transit.

AWS notes that the arbitrator in ARB 7, Order No. 97-033, found that Western Wireless's switch does not operate as a tandem, and urges that the finding there is not binding on this proceeding. AWS also points out that in ARB 8, Order No. 97-034, the Commission established symmetrical rates between Western Wireless and GTE and compensated Western Wireless as though its switch is a tandem. AWS argues that the Commission should find that AWS's MSCs function as tandem switches and base reciprocal symmetrical compensation accordingly.

USWC: USWC argues that the Commission should adopt USWC's Total Element Long Run Incremental Cost (TELRIC) pricing, which has been submitted in this docket. USWC also seeks to recover a portion of its actual common costs and the existing

depreciation reserve deficiency as an addition to its TELRIC costs. USWC argues that the Commission should not adopt any methodology that results in recovery of less than USWC's actual expenses. USWC also argues that the Commission must recognize that in today's world of rapid technological change, lives of depreciable assets are much shorter than originally predicted. When the forecast of projected usefulness of plant and equipment is longer than the time that plant and equipment are actually useful, a reserve deficiency results. USWC estimates its Oregon reserve deficiency to be $107.4 million and seeks to recover it through local and tandem switching usage prices over a five year period.

Tandem Issue. USWC argues that AWS's switch network does not qualify for tandem switch rates. 47 C.F.R. 701(c) defines "transport" as:

> the transmission and any necessary tandem switching of local telecommunications traffic . . . from the interconnection point between the two carriers to the terminating carrier's end office that directly serves the called party, or equivalent facility provided by a carrier other than an incumbent LEC.

47 C.F.R. 701(d) defines call termination as:

> termination is the switching of local telecommunications traffic at the terminating carrier's end office switch, or equivalent facility, and delivery of such traffic to the called party's premises.

According to USWC, the evidence in this case shows that AWS's switch performs only the end office functions of call termination. The AWS switch connects callers to AWS subscribers and delivers the traffic to the called party. USWC argues that the AWS switch does not perform transport; that is, it does not deliver the traffic from the interconnection point to the end office serving the called party. When transport is involved, USWC asserts, two switching functions are involved: transport (switching the call to the appropriate end office) and call termination (connecting the call to the called party).

USWC points out that under the existing contract, when AWS chooses to interconnect and deliver traffic originating on its network to USWC at a USWC tandem switch, AWS is charged both the tandem switching and transport element (between the incumbent LEC's two switches) and the end office switching rates, for a total price of $.0245 per minute of use. If AWS chooses to interconnect and deliver its traffic to USWC at an end office location, AWS will pay only the end office switching charge (currently $.0206).

USWC argues that the components of the AWS network are comparable to the components of the USWC network, and that the AWS MSC functions like a USWC end office. That is, when a USWC customer calls an AWS subscriber, the AWS MSC provides only a single switching service. When a call is routed through a USWC tandem switch to a USWC end office, two switching functions are involved. The AWS switch only connects AWS subscribers to each other or to other service provider networks that are directly connected to the MSC, for the sole purpose of delivering calls to or receiving calls from AWS subscribers. USWC contends that these are end office switching functions, as defined in the

Order and Rules. AWS relies on USWC to perform the tandem switching functions necessary to reach all other local service provider networks and the subscribers.

Moreover, USWC points out, AWS can avoid the tandem switching charge by delivering its traffic to USWC end offices for termination. AWS has only one switching facility. Therefore, if the Commission determines that AWS's switch is a tandem subject to tandem switching rates, USWC has no way to avoid an unneeded tandem switching charge on AWS's network. When AWS delivers a call to USWC, USWC is required to perform both tandem and end office switching functions for every call delivered by AWS and terminated to a USWC customer. AWS could itself perform the tandem functions of directing the call to the appropriate end office, but has decided to have USWC perform that function and incur those costs.

Resolution:

a. ***UM 351/UM 844 rates adopted for transport and termination by USWC.*** USWC proposes to base rates on its TELRIC pricing proposal submitted in this docket, which includes a portion of its actual common costs and the existing depreciation reserve deficiency. The Commission has consistently chosen to base rates set in arbitrations on its own cost study docket (UM 773) and its pricing dockets (UM 351 and UM 844). There is good reason to do so in this arbitration as well.

The Commission has spent years working out a methodology for costing and pricing, and the dockets named above are the result of that work. The methodology is established and reviewable. USWC's methodology and results are unreviewed and the inclusion of a depreciation reserve deficiency is a departure from standard Commission costing/pricing policy. I will adopt the UM 351 rates (set forth in Revised Appendix C to Order No. 96-283) as modified by UM 844, Order No. 97-239, Appendix C, for transport and termination between the parties.

AWS suggests that bill and keep should apply where traffic is in balance, and asserts that traffic balance should be presumed if the dollar difference in statewide obligations are within 10 percent of each other. I take this to be a suggestion to enhance administrative efficiency. If the parties choose to handle their mutual financial obligations in this way, they are free to work out that arrangement, but I will not adopt the proposal as part of this arbitration.

b. The AWS switch is not a tandem. AWS argues that its switch is a tandem in terms of geographic area and of functionality. However, I believe that USWC has pointed out the central functional difference between a tandem and an end office switch. AWS does not incur the costs of both end office and tandem switching functions. The MSC switch does not provide its subscribers with connections to the rest of the world. That connectivity comes via USWC's tandem.

If the Commission were to ignore the connectivity that a tandem provides and consider AWS's switch eligible for tandem rates, USWC would not be compensated for the distinctive

function that its tandem performs. The result would be to allow AWS to charge a tandem charge for costs it does not incur, and to avoid tandem switching charges on USWC's network when it chooses to establish direct connections to USWC's end offices. I conclude that USWC is obligated to pay AWS at the end office rate established for USWC's end offices.

3. Compensation for Transit Traffic

AWS: AWS witness Ms. Mounsey defined transited third party traffic as follows:

> [Transit traffic is] traffic that will either originate or terminate on the network of a third party provider, and will transit the network of the LEC (or some other carrier, which could be the CMRS provider). For example, if a CLEC sends a call to an AWS customer via the USWC tandem, USWC performs a transiting function. Similarly, if an AWS customer calls a customer of a CLEC and the call is routed over the USWC tandem, USWC also performs a transiting function. In the current case, AWS argues that compensation for transit traffic involves traffic delivered by AWS to USWC for termination to a third carrier.

According to AWS, there is no dispute about USWC's willingness to provide transit services to AWS nor about USWC's right to be compensated for the delivery of transit traffic. AWS believes that USWC would be fully compensated for transit through a bill and keep arrangement; however, should the Commission not adopt that arrangement, AWS proposes to pay USWC the combined tandem switching and average transport rate of $.003421 for traffic delivered to non USWC customers that terminates at USWC's tandem.

The parties also disagree on the proper compensation to be paid with respect to other carriers if bill and keep is not adopted for transit traffic. AWS is willing to negotiate agreements with other carriers for termination charges associated with transited traffic. Until such agreements can be negotiated, AWS urges that USWC should not bill or collect such termination charges for carriers using its facilities for transited traffic unless those carriers have a reciprocal arrangement themselves. AWS and the third parties using USWC's facilities should pay USWC the appropriate transit charge and should originate and terminate their own traffic on a bill and keep basis. AWS wants to avoid the result it believes USWC is seeking, that AWS would pay a third party carrier for termination while that carrier does not compensate AWS.

USWC: USWC believes that it is entitled to compensation for the termination of transit traffic based on TELRIC costs. USWC bases its position on §252(d)(2)(A) of the Act, which provides that reciprocal compensation shall be based upon terms and conditions that provide for mutual recovery "by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier." 47 C.F.R. §51.701 defines reciprocal compensation as follows:

> For purposes of this subpart, a reciprocal compensation arrangement between two carriers is one in which each of the two carriers receives compensation from the other

carrier for the transport and termination on each carrier's network facilities of local telecommunications traffic that originates on the network facilities of the other carrier.

USWC argues that a bill and keep arrangement for transit traffic is entirely inappropriate and would result in USWC receiving no compensation for that traffic. None of this traffic is originated or terminated by USWC and USWC does not use AWS for transit calls. Although USWC agrees to continue to provide AWS with the option of using USWC's tandem switches to third party carriers, USWC argues that it should be able to recover the costs of transit traffic, which include tandem switching and transport, on a usage sensitive basis. USWC notes that AWS agrees that if the Commission rejects the bill and keep proposal, AWS should pay USWC the rates ordered by the Commission in this docket for transit traffic.

Resolution: ***AWS shall pay USWC the rates ordered in this docket for transit traffic.*** I have rejected bill and keep as a compensation arrangement between the parties in this docket. I find that USWC is entitled to compensation for termination of transit traffic. Consistent with the compensation decisions above, the appropriate rate for transit traffic to third parties is that established in UM 351, as modified by UM 844.

4. Effective Date for Reciprocal Compensation

AWS argues that it is entitled to reciprocal compensation from October 3, 1996, the date that it submitted its request for interconnection to USWC. AWS bases this claim on FCC Rule 717(b), which provides:

> From the date that a CMRS provider makes a request [for interconnection] until a new agreement has been either arbitrated or negotiated and has been approved by a state commission, the CMRS provider shall be entitled to assess upon the incumbent LEC the same rates for transport and termination that the incumbent LEC assesses upon the CMRS provider pursuant to the preexisting arrangement.

Because AWS requested interconnection on October 3, 1996, it argues that the reciprocal compensation obligation should date back to that time. USWC contends that the Eighth Circuit's stay, which was imposed before AWS's request for interconnection and not lifted until November 1, 1996, precludes enforcement of the reciprocal compensation obligation until November 1, 1996. AWS argues that an administrative agency order that is initially stayed and then allowed to go into effect is effective as of its initial issuance date.[3] Thus the FCC Order requiring reciprocal compensation was effective as of September 7, 1996, thirty days after publication in the Federal Register. According to AWS, the lifting of the stay rendered it effective on October 3, the day AWS submitted its request for interconnection.

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[3] AWS cites to *Arkadia Milling Co. v. St. Louis S.W.Ry.Co.*, 249 U.S. 134 (1919), in which the Supreme Court held that an action by an administrative agency that had been stayed and the stay then dissolved was effective as of its original date. The rule of restitution followed in that case, AWS notes, has been followed numerous times since. AWS also notes the analogy to interest on a judgment pending appeal. Even if a bond is posted to stay enforcement of the judgment pending resolution of the appeal, once the stay has been lifted, the right to interest reverts back to the date of the judgment.

The FCC Order provides that the right to reciprocal compensation pending a new agreement begins "as of the effective date of the rules we adopt pursuant to this order" (FCC Order ¶1094). The effective date is defined as "30 days after publication of a summary in the Federal Register" (FCC Order ¶1442). AWS argues that one could interpret the lifting of the stay as a reinstatement of the September effective date or as USWC does, as causing the rules to become effective on November 1. This interpretation, according to AWS, ignores the precise language of the rule, which states that the right runs from the date the request for a new agreement was sent.

AWS suggests the following way to harmonize the two dates. AWS's right to receive interim reciprocal compensation actually went into effect on November 1, when the FCC Order was allowed to become operative on lifting the stay. Second, because of the explicit language of the rule, the effective date for the commencement of compensation under this newly effective right was the date of the request for a new agreement, in this case October 3.

USWC: USWC argues that AWS seeks reciprocal compensation in this proceeding prior to the effective date of FCC Rule 51.717. USWC argues that Rule 51.717 became effective on November 1, 1996, the day after which the Eighth Circuit modified its stay.

Resolution: ***Effective date for reciprocal compensation obligation is October 3, 1996.*** I am persuaded by AWS's legal arguments that the effective date for the stayed rules relates back to the original effective date on the lifting of the stay. The reciprocal compensation obligation arose on October 3, because the request for interconnection was filed on that date, after the effective date of Rule 51.717.

Issue B. Application of Access Charges

AWS asserts that transport and termination charges apply to local calls. Access charges apply to the delivery of toll calls. According to AWS, AWS and USWC agree on this point. They also agree, with one exception, that all CMRS calls originating and terminating within the same MTA are to be treated as local calls.

The one issue outstanding between the parties concerns access charges for intra MTA, interstate roaming calls. These calls occur when a wireless customer roaming from her home location places a call that originates and terminates within a single multistate MTA but crosses a state boundary. Such calls, because they originate and terminate within the same MTA, are to be treated as local calls for compensation purposes. The FCC Order ¶1036 states:

> Accordingly, traffic to or from a CMRS network that originates and terminates within the same MTA is subject to transport and termination rates under section 251(b)(5), rather than interstate and intrastate access charges.

That is, AWS argues, all such calls are local in nature. There is no exception for the types of calls at issue here.

AWS points out that access charges were not assessed on intra MTA interstate calls under the 1994 agreement. This fact, AWS argues, confirms its position that these calls are not subject to access charges.

AWS contends that under USWC's proposal in this case, if two customers, one based in Portland, Oregon, and one based in Vancouver, Washington, are both physically in Portland and place a call to Vancouver, the Portland customer's call would be rated as a local call by USWC because it is an intra MTA call. USWC would treat the Vancouver customer's call as an interstate roaming call, despite the fact that it is an intra MTA call, and USWC would impose access charges. Currently, access charges would not apply to such a call.

For these reasons, AWS argues that the Commission should determine that all intra MTA traffic between the AWS and USWC networks is subject to local compensation rates under §251(b)(5) and that none of this traffic is subject to interstate or intrastate access charges.

USWC: USWC asserts that intra MTA roaming calls should be subject to interstate access charges and that AWS should be required to identify the amount of such traffic. USWC bases its position on an excerpt from the FCC Order ¶1043:

> Under our existing practice, most traffic between LECs and CMRS providers is not subject to interstate access charges unless it is carried by an IXC, with the exception of certain interstate interexchange service provided by CMRS carriers, such as some "roaming" traffic that transits incumbent LECs' switching facilities, which is subject to interstate access charges.

The FCC inserted a footnote at the end of that passage (footnote 2485; citations omitted):

> [S]ome cellular carriers provide their customers with a service whereby a call to a subscriber's local cellular number will be routed to them over interstate facilities when the customer is "roaming" in a cellular system in another state. In this case, the cellular carrier is providing not local exchange service but interstate, interexchange service. In this and other situations where a cellular company is offering interstate, interexchange service, the local telephone company providing interconnection is providing exchange access to an interexchange carrier and may expect to be paid the appropriate access charge . . . . Therefore, to the extent that a cellular operator does provide interexchange service through switching facilities provided by a telephone company, its obligation to pay carrier's carrier [i.e., access] charges is defined by § 69.5(b) of our rules.

Resolution: ***Intra MTA traffic between the AWS and USWC networks is subject to local compensation rates under §251(b)(5); none of this traffic is subject to interstate or intrastate access charges.***

The entire text of FCC Order ¶1043 makes clear that USWC's reliance on ¶1043 to support its position is misplaced. The entire paragraph reads:

> As noted above [¶1036], CMRS providers' license areas are established under federal rules, and in many cases are larger than the local exchange service areas that state commissions have established for incumbent LECs' local service areas. We reiterate that traffic between an incumbent LEC and a CMRS network that originates and terminates within the same MTA (defined based on the parties' locations at the beginning of the call) is subject to transport and termination rates under section 251(b)(5), rather than interstate or intrastate access charges. Under our existing practice, most traffic between LECs and CMRS providers is not subject to interstate access charges unless it is carried by an IXC, with the exception of certain interstate interexchange service provided by CMRS carriers, such as some "roaming" traffic that transits incumbent LECs' switching facilities, which is subject to interstate access charges[footnote 2845 here]. Based on our authority under section 251(g) to preserve the current interstate access charge regime, we conclude that the new transport and termination rules should be applied to LECs and CMRS providers so that CMRS providers continue not to pay interstate access charges for traffic that currently is not subject to such charges, and are assessed such charges for traffic that is currently subject to interstate access charges (citations omitted).

The entire context of the passage makes clear that USWC's argument is without merit. The paragraph establishes the principle that most traffic between LECs and CMRS providers is not subject to interstate access charges unless carried by an IXC. The narrow exception to that rule is for calls that are essentially forwarded to a roaming CMRS subscriber. A description of that forwarding service is the gist of the footnote USWC cites. Those calls are, by definition, *not* calls that originate and terminate in the same MTA. The rule states unambiguously that calls that originate and terminate in the same MTA, based on locations at the beginning of the call, are not subject to interstate or intrastate access charges. I will apply that rule in this arbitration.

Issue C. Paging Services

Compensation for Termination of Paging Traffic. According to AWS, the paging service dispute between AWS and USWC focuses on two issues: whether USWC is required to compensate AWS for termination of paging calls and whether USWC is prohibited from charging AWS for the facilities used to deliver paging traffic. In both cases, AWS asserts that the question is primarily legal, although AWS proposes UM 351 rates and USWC relies on the TELRIC study that has not been reviewed by the Commission. AWS argues that it is entitled to be compensated for the termination of paging traffic originated by USWC and AWS need not compensate USWC for facilities used to deliver such calls, because USWC is the originator of all such calls.

AWS argues that compensation for termination of paging traffic is governed by the Act and the FCC order. The Order defines paging providers as "telecommunications carriers," and under the Act, all telecommunications carriers are entitled to reciprocal compensation

from incumbent LECs (47 U.S.C. §251(b)(5)). There is no exclusion in the terms of the Act that would prevent these rules from applying to paging providers. AWS points out that the Order makes the inclusion of paging providers explicit (FCC Order ¶1008):

> Accordingly, LECs are obligated, pursuant to section 251(b)(5) (and the corresponding pricing standards of section 252(d)(2)), to enter into reciprocal compensation arrangements with all CMRS providers, including paging providers, for the transport and termination of traffic on each other's networks.

At ¶1092 of the Order, the FCC further stated:

> [P]aging providers, as telecommunications carriers, are entitled to mutual compensation for the transport and termination of local traffic, and should not be required to pay charges for traffic that originates on other carriers' networks.

In response to USWC's argument that a California arbitrator's decision reached the opposite result, AWS points out that the California Public Utilities Commission rejected the arbitrator's decision as failing to comply with §§251(b)(5) and 252(d)(2)(A)(I) of the Act. *Application of Cook Telecom, Inc., for Arbitration Pursuant to Section 252 of the Federal Telecommunications Act of 1996 to Establish an Interconnection Agreement with Pacific Bell*, CPUC 97-05-095 (97-02-003 May 21, 1997) at 13.

Given the express determination by the FCC that paging providers are entitled to compensation, AWS contends that USWC's argument that paging traffic is one-way traffic fails to convince. AWS urges that USWC must compensate AWS for the termination of all paging traffic.

Prohibition on Charges for Paging Facilities. AWS argues that if paging providers must be compensated for termination of traffic, they must not be charged for the facilities used to deliver such traffic. AWS cites to ¶ 1092 of the FCC Order, which states that paging providers "should not be required to pay charges for traffic that originates on other carriers' networks." At ¶1042, the FCC also explicitly prohibits the imposition of such charges, as they had been applied in the past:

> We therefore conclude that section 251(b)(5) prohibits charges such as those some incumbent LECs currently impose on CMRS providers for LEC-originated traffic. As of the effective date of this order, a LEC must cease charging a CMRS provider or other carrier for terminating LEC-originated traffic and must provide that traffic to the CMRS provider or other carrier without charge.

AWS argues that by seeking to impose facilities charges on AWS as it has done in the past, USWC is trying to circumvent this explicit FCC rule. AWS urges the Commission to reject this effort and preclude USWC from imposing any facilities charges for LEC originated paging traffic.

USWC argues that AWS is not entitled to receive "reciprocal compensation" for AWS's termination of paging customers' calls, because paging service is one way and does not originate traffic for termination on USWC's network. Because there is no mutual exchange of traffic with paging services and USWC will receive no compensation from AWS, USWC argues that §252(d)(2) of the Act does not apply.

USWC also contends that AWS should be required to pay for facilities required to connect AWS's dedicated paging facilities to USWC's network. USWC believes that AWS's position is tantamount to having USWC ratepayers subsidize significant portions of the expense of providing paging service to AWS customers. USWC notes that on April 25, 1997, Southwestern Bell Telephone Company wrote to the FCC requesting clarification of whether a March 3, 1996, letter from the FCC Common Carrier Bureau, which addresses charges by LECs to terminate calls that originate on their networks, was intended to apply to facilities charges. On May 22, 1997, the FCC established a pleading cycle to take comment on the Southwestern Bell letter. USWC asks the Arbitrator to take official notice of the FCC notice and asks the Arbitrator to allow for possible changes as this issue continues to unfold.

Resolution: ***AWS is entitled to compensation for paging traffic terminated on its network. USWC may not impose facilities charges until the FCC reaches a decision on the Southwest Bell inquiry.***

I find that the plain language of FCC Order ¶1008 establishes an obligation for USWC to enter into reciprocal compensation arrangements with all CMRS providers, including paging providers. USWC's argument that traffic is not exchanged does not override the plain meaning of the Order.

In accordance with USWC's request, I take official notice of the FCC notice of pleading cycle on the Southwestern Bell letter pursuant to OAR 860-014-0050. Because of the uncertainty surrounding payment for the facilities required to connect a paging service to USWC's network, I will not allow USWC to impose a facilities charge at present. If the FCC eventually decides that facilities charges are appropriate, USWC may impose them on AWS at that time.

Issue D. Access to Unbundled Network Elements

AWS: *General Extent of Unbundling.* AWS argues that §251(c)(3) of the Act imposes on USWC a duty to provide nondiscriminatory access to network elements on an unbundled basis at any technically feasible point. FCC Rule 51.319 requires USWC to provide AWS with access to the local loop, network interface devices, local and tandem switches (including all software features provided by such switches), interoffice transmission facilities, signaling networks (including but not limited to signaling links and signaling transfer points), call related databases, operational support systems functions, and operator services/directory assistance facilities.

The FCC also made clear that state commissions could require the unbundling of additional network elements (FCC Order ¶366). AWS requests that the Commission adopt the

level and extent of unbundling established in Order No. 96-283 (UM 351) for purposes of the Interconnection Agreement between AWS and USWC. AWS proposes that USWC be required to negotiate in good faith if AWS determines that another aspect of unbundling is required for specific wireless applications. AWS urges the Commission to approve the language in Section 2(F) of the AWS proposed Interconnection Agreement for unbundling additional network elements.

Access to USWC's Operational Support Systems (OSS). AWS asserts that USWC is legally required to provide AWS access to its OSS on an unbundled basis equivalent to the access it itself enjoys. OSS generally relate to a variety of computer databases and systems that support services necessary in the operation of a network. USWC's OSS are a network element under §153(45) of the Act, which must be unbundled on request, according to §251(c)(3). The FCC requires USWC to provide access to its preordering, ordering, provisioning, and maintenance/repair by January 1, 1997. FCC Order ¶¶316, 516-28. By Order No. 96-283, at 3, this Commission also ordered USWC to provide access to its OSS by January 1, 1997.

AWS points out that electronic interfaces are necessary to access USWC's OSS. According to AWS, the FCC has directed the use of electronic interfaces to the support systems (FCC Order ¶535):

> For example, to the extent that customer service representatives of the incumbent have access to available telephone numbers or service interval information during customer contacts, the incumbent must provide the same access to competing providers. Obviously an incumbent that provisions network resources electronically does not discharge its obligations under Section 251(c)(3) by offering competing providers access that involves human intervention, such as facsimile based ordering.

AWS argues that according to the record, AWS requires a real time electronic interface with USWC for ordering, provisioning, and maintenance/repair functions. AWS needs the ordering and provisioning interface to order network service from USWC and the maintenance interface to facilitate necessary maintenance or repair functions such as trouble entry, status updates, trouble escalation, and ticket closure.

According to AWS, USWC has introduced no evidence concerning specifications or details of its existing interfaces. USWC did not put forth any electronic interface proposal during contract negotiations. AWS urges that because the record contains no proposal by USWC to provide parity in access to its OSS, the Commission should require interfaces to access USWC's OSS as contained in the AWS Interconnection Agreement. *See* Section 3; Section 5(c).

Pricing of Unbundled Elements. AWS argues that the overriding principle to follow in pricing is that USWC's rates for the services it provides should be based on Commission approved UM 773 costs and UM 351 prices, as modified in Docket UM 844.

USWC chooses to ignore the Commission's UM 773 costs and advocates instead a new cost study that is unapproved by the Commission. USWC witness Mason admitted that USWC's position, if adopted, would be inconsistent with UM 351 rates and UM 773 costs. This new USWC cost study includes a surcharge to recover its depreciation reserve deficiency from its total actual cost calculation. AWS points out that the FCC has stated that the inclusion of inadequately depreciated costs into the price of unbundled network elements and interconnection "is not the proper remedy." FCC Order ¶706.

Resolution: ***Level and extent of unbundling established in Order No. 96-283 (UM 351) adopted; AWS access to USWC OSS ordered; pricing of unbundled elements in accordance with UM 351 prices, as modified by UM 844***

USWC did not respond to these arguments in its brief. I agree with AWS's proposal to use Order No. 96-283 to set the level and extent of unbundling for this arbitration.

USWC is obligated to provide AWS unbundled access to its OSS. The FCC required USWC to provide access to its preordering, ordering, provisioning, and maintenance/repair by January 1, 1997. FCC Order ¶¶316, 516-28. By Order No. 96-283, at 3, this Commission also ordered USWC to provide access to its OSS by January 1, 1997.

The appropriate prices for unbundled network elements are those established in Order No. 96-283, UM 351, as modified by Order No. 97-239 (UM 844).

Issue E. Access to Poles, Ducts, Conduits, and Rights-of-Way

AWS: *Scope of Access.* AWS argues that §251(b)(4) of the Act imposes on all LECs the obligation "to afford access to the poles, ducts, conduits, and rights-of-way of such carrier to competing providers of telecommunications services on rates, terms, and conditions that are consistent with Section 224" of the Act. AWS contends that nondiscriminatory access, a requirement of §224(f)(1), means that USWC must take reasonable steps to allow AWS access to its poles, etc., on the same terms and conditions as USWC provides itself. The FCC, according to AWS, has made it clear that an incumbent LEC is prohibited from favoring itself over a competitor with respect to such access. FCC Order ¶1157. AWS contends that USWC's duty to provide access flows from the incumbent to the other carrier and is not reciprocal.

AWS argues that it seeks reasonable, nondiscriminatory access to USWC's poles, ducts, conduits, and other rights of way, consistent with the Act and the FCC Order. AWS urges the Commission to require USWC to accommodate the differing technological needs of AWS as a CMRS provider. For instance, AWS needs to deploy innovative microcellular technologies to decrease the need for additional cell sites and improve the availability and signal quality of the cellular service. AWS asks the Commission to specifically authorize AWS's use of microcell technology in its access to the required USWC rights of way. The AWS proposed contract language in Section 8 requires USWC to provide equal, nondiscriminatory access to rights of way under terms and conditions as favorable as USWC would provide itself, consistent with the Act.