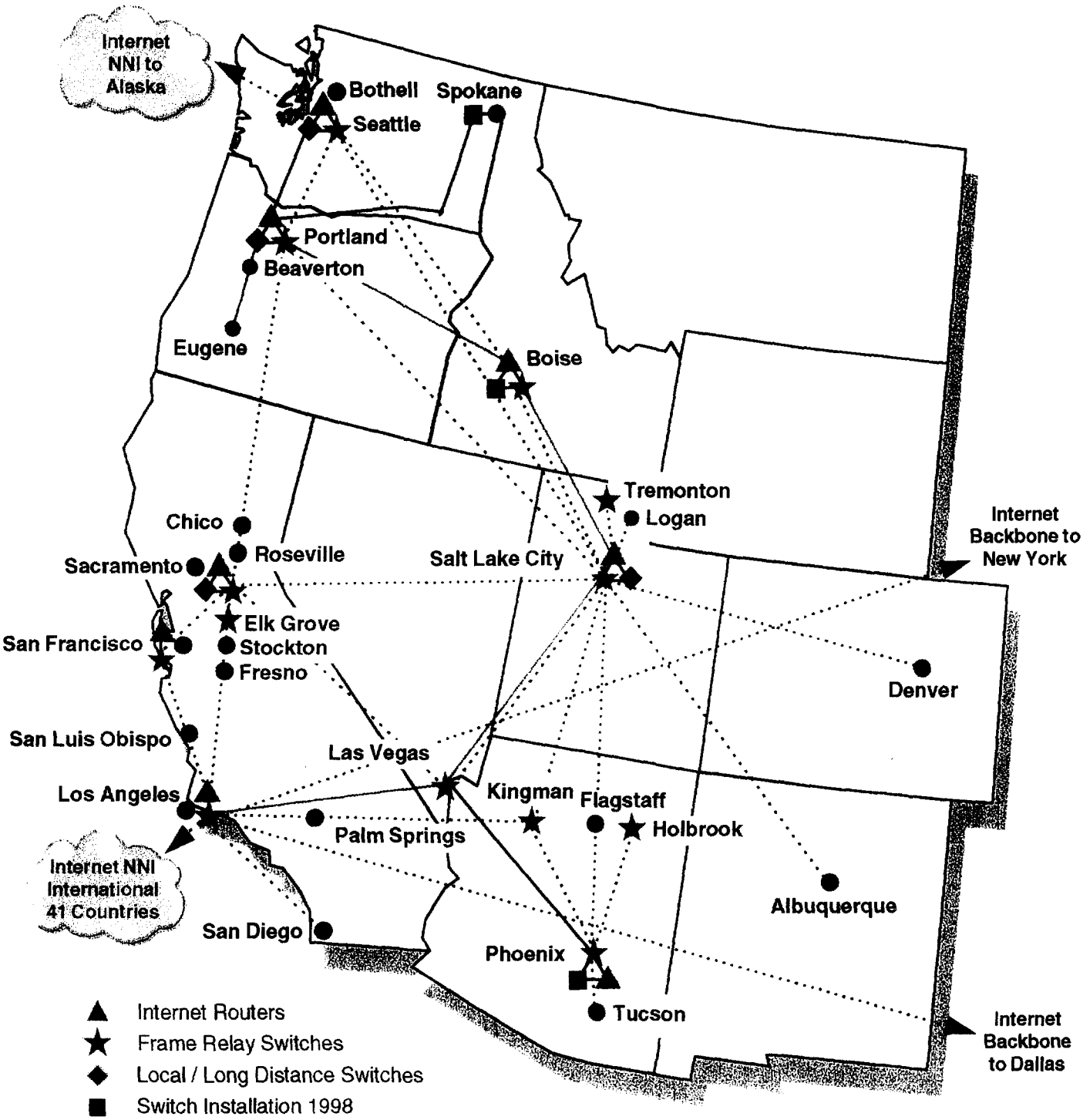
B

Electric Lightwave, Inc. Network Map



- ▲ Internet Routers
- ★ Frame Relay Switches
- ◆ Local / Long Distance Switches
- ■ Switch Installation 1998
- ● LEC Network to Network Interfaces
- ···· Internet/Data Backbone
- — Long Haul Network
- — Scheduled Completion 1st half 1998
- — Scheduled Completion 1st half 1999

ELECTRIC LIGHTWAVE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

C97-1073Z

ELECTRIC LIGHTWAVE, INC., a Delaware corporation, Plaintiff, v. U S WEST COMMUNICATIONS, INC., a Colorado corporation, Defendant.	Civil No. COMPLAINT FOR INJUNCTION AND DAMAGES FOR VIOLATION OF SHERMAN ACT (15 U.S.C. § 2) AND PENDENT STATE LAW CLAIMS DEMAND FOR JURY TRIAL

JURISDICTION AND VENUE

1. This is an action under federal and state antitrust laws to recover money damages resulting from practices designed and implemented by defendant, U S WEST COMMUNICATIONS, INC. ("USWC"), to preserve, extend, and enhance USWC's monopoly over local telephone service. The complaint is brought under Section 2 of the Sherman Act (15 U.S.C. § 2), Sections 4 and 16 of the Clayton Act (15 U.S.C. §§ 15(a), 26), and the antitrust laws and common law of the states of Washington, Oregon, Utah, and Arizona. This court has subject-matter jurisdiction over the

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1 federal antitrust claims, pursuant to 15 U.S.C. §§ 15 and 26 and
2 28 U.S.C. §§ 1331, 1337, and 2201. This court has supplemental
3 jurisdiction over the claims asserted under state law, pursuant
4 to 28 U.S.C. § 1367.

5 **PARTIES**

6 2. Plaintiff, Electric Lightwave, Inc. ("ELI"), is
7 the owner and operator of property and equipment necessary to
8 carry on the business of providing local exchange
9 telecommunications services. ELI has applied for and has been
10 granted authority by state utility commissions in Washington,
11 Oregon, Utah, and Arizona to provide local exchange
12 telecommunications services in portions of the existing service
13 areas of certain incumbent telecommunications carriers (including
14 USWC) pursuant to federal and state law.

15 3. USWC is a Colorado corporation, headquartered in
16 Denver, Colorado, but with a principal place of business for the
17 Pacific Region at 1600 Bell Plaza, Seattle, Washington. USWC
18 transacts business and is found in this district and provides
19 switched local exchange services in a number of areas in
20 Washington, including Seattle. Venue is proper in this district,
21 pursuant to Section 12 of the Clayton Act, 15 U.S.C. § 22.

22 4. Any references to USWC include any predecessors,
23 successors, subsidiaries, affiliates, and divisions of USWC as
24 the context requires.

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DEFINITIONS OF RELEVANT TERMS

5. The term "LEC" is an acronym for "local exchange carrier," meaning a company that provides local exchange telephone service within a specified geographic area.

6. The term "CLEC" is an acronym for "competitive local exchange carrier," meaning a new company that provides or will provide local exchange telephone service within specified geographic service areas and will do so in competition with the incumbent LEC. Federal or state statutes, regulations, or orders occasionally use the term "alternate local exchange carrier" ("ALEC"), but that term is generally synonymous with "CLEC" and will be used as such for purposes of this complaint.

7. The term "LATA" is an acronym for "local access and transport area." A LATA is a geographic area within which a LEC is legally permitted to originate and complete telephone calls. A LEC owned by a regional Bell operating company (such as USWC) has generally not been permitted to transmit telephone calls across LATA boundaries.

8. The term "IntraLATA" refers to a telephone call that originates and terminates within a LATA. An IntraLATA call can include a local or toll call within a LATA.

9. The term "InterLATA" refers to a telephone call that is carried across LATA boundaries and includes interstate and international calls.

10. The term "Service Area" refers to an area in which a particular LEC provides service. The references to "Service

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1 Area of USWC" are to USWC or to the conduct of USWC within the
2 area of the states of Washington, Oregon, Utah, and Arizona and
3 adjoining states in which USWC serves as the LEC.

4 11. The term "Local Exchange Facilities" refers to
5 those facilities used by the LEC in its Service Area to perform
6 any activity or function in connection with the origination,
7 transmission, switching, routing, or termination of local calls.

8 12. The term "Exchange Access Facilities" refers to
9 facilities used by the LEC in its Service Area to perform any
10 activity or function in connection with the origination,
11 transmission, switching, routing, or termination of calls between
12 a LEC and an interexchange carrier.

13 **GENERAL ALLEGATIONS**

14 13. Prior to 1984, American Telephone & Telegraph
15 Company ("AT&T") and Bell operating companies ("BOCs")
16 monopolized the provision of local exchange, IntraLATA and
17 InterLATA telecommunications services throughout most of the
18 United States, and the manufacture and sale of telephone
19 equipment. In some areas, other telecommunications companies,
20 such as General Telephone & Electric ("GTE"), provided local
21 exchange services. GTE and other smaller LECs did not compete
22 directly with AT&T, however, but instead served customers in
23 designated service areas.

24 14. In 1974, the United States brought litigation
25 against AT&T and alleged monopolization of manufacture, sale, and
26 installation of telephones in violation of federal antitrust

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laws. That litigation was concluded by a modified final judgment ("MFJ") entered effective January 1, 1984, directing AT&T to divest itself of its ownership of the BOCs. United States v. American Tel. & Tel. Co., 552 F. Supp. 131 (D.D.C. 1982), aff'd sub nom. Maryland v. United States, 460 U.S. 1001 (1983). The BOCs thereafter became owned by regional holding companies ("RHCs") (hereinafter collectively referred to as "RBOCs"). Defendant USWC is an RBOC.

15. After divestiture, the RHCs through the RBOCs retained monopolies on essential facilities for the transmission of local calls (i.e., Local Exchange Facilities) and for access to interexchange carriers for the origination and termination of toll calls. USWC is in the business of providing local and IntraLATA telecommunications services in many geographic areas in 14 states, including Washington, Oregon, Utah, and Arizona. In those service areas, USWC handles in excess of 95 percent of the telecommunications services that originate or terminate at telecommunications equipment of consumers.

16. After the breakup of the old Bell telephone system, competition was introduced and developed by new providers of long-distance telecommunications services. Under the MFJ, service areas were divided into LATAs. The RBOCs could serve within LATAs but were prohibited from providing telephone service between LATAs. Such InterLATA service was to be provided by AT&T and new long-distance competitors. United States v. Western Elec. Co., 569 F. Supp. 990, 993-94 (D.D.C. 1983).

17. When new competing long-distance carriers sought to interconnect with existing systems, AT&T raised a variety of objections, including claimed incompatibility of equipment, and alleged failure to meet tariffs established by AT&T. In a leading case, MCI Communications v. American Tel. & Tel. Co., 708 F.2d 1081 (7th Cir. 1983), the court held that AT&T's actions in filing numerous tariffs for the purpose of creating administrative hurdles could be an antitrust violation and that disconnecting of certain interconnections that had previously been offered could be an antitrust violation. The court also held that the dominant carrier's designation of service areas in an anticompetitive fashion and in order to unduly limit a new competitor could create antitrust liability.

18. After extensive litigation with AT&T, competing long-distance carriers such as MCI Communications Corp. and Sprint Corporation were allowed to offer long-distance telecommunications services in the 1970s and 1980s, but the competing long-distance carriers did not have equal access (1+ dialing) until 1984.

19. ELI was founded in 1990 to provide switched local and long-distance services in major geographic market areas throughout the western United States. ELI seeks to furnish telecommunications primarily to large and medium-sized communications-intensive businesses that require state-of-the-art communications and data services. ELI has constructed extensive long-haul fiber-optic cable networks with local operating

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clusters incorporating switched broadband equipment in each of the geographic markets it serves. ELI has interconnected the geographic markets with owned or leased long-distance networks. As of December 31, 1996, ELI had over one thousand route miles, tens of thousands of fiber miles, and hundreds of buildings on its network.

20. ELI currently operates networks capable of providing switched local and long-distance services in the following geographical areas: Seattle, Washington, Portland, Oregon, Salt Lake City, Utah, and Sacramento, California. Each of the areas served by ELI includes an extensive fiber network and state-of-the-art switching. ELI has also developed a fully redundant Internet backbone network that provides Internet connections in each of its markets. These connections include access to the three largest Internet providers, UUNET Technologies, Sprint Corporation, and MCI Communications Corp.

21. ELI has steadily grown over the years. ELI was the first competing LEC to offer switched local service in Seattle, Portland, and Salt Lake City. ELI introduced dial-tone service in Seattle in 1995, Portland in September 1996, and Salt Lake City in August 1996.

22. In early 1994, ELI became the first competing telecommunications company west of the Mississippi to gain regulatory approval to offer local phone service. As of the beginning of 1997, ELI had obtained regulatory authority to provide services in Washington, Oregon, California, and Utah. In

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1997, ELI was granted intrastate authority to provide services in Arizona, Minnesota, and Idaho. ELI currently offers local exchange services in Washington, Oregon, California, and Utah.

23. ELI has operational interconnection arrangements in place with USWC, Pacific Bell, GTE, Pacific Telecom, Inc., and other companies.

24. The federal Telecommunications Act of 1996 (Public Law No. 104-104) continued the deregulation of the telecommunications industry and emphasized expansion of competition. As part of that concept, Congress directed that each telecommunications carrier has the duty (a) "to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers" and (b) "not to install network features, functions, or capabilities that do not comply with the guidelines and standards established" by the Federal Communications Commission ("FCC"). 47 U.S.C. § 251(a)(1), (2). More specifically, Congress ordered that each carrier had:

> The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network--
>
> (A) for the transmission and routing of telephone exchange service and exchange access;
>
> (B) at any technically feasible point within the carrier's network;
>
> (C) <u>that is at least equal in quality to that provided by the local exchange carrier to itself</u> or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and

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> (D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory . . .

(Emphasis added.) 47 U.S.C. § 251(c)(2). The incumbent carrier also has the duty (a) to provide to any requesting telecommunications carrier nondiscriminatory access to network elements on an unbundled basis at any technically feasible point and (b) to provide for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the incumbent local exchange carrier. The incumbent carrier must use reasonable and nondiscriminatory rates, terms, and conditions. Regulations promulgated by the FCC direct that a local exchange carrier provide local and toll dialing parity (47 C.F.R. § 51.205); allow interconnection at any technically feasible point within the incumbent LEC's network (47 C.F.R. § 51.305); and provide a level of quality equal to that which the incumbent LEC provides itself, this obligation not being limited to a consideration of service quality as perceived by end users but including service quality as perceived by the requesting telecommunications carrier (47 C.F.R. § 51.305(iv)(3)). As a consequence, discrimination in the provision of facilities or in transmission of telecommunications traffic is prohibited. Under state law, discriminatory or anticompetitive acts (such as call blocking of another carrier's traffic) are specifically prohibited (RCW 80.36.220; Utah Code Ann. § 54-8b-2.2).

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25. On or about January 12, 1996, the Public Utility Commission of Oregon ("PUCO") entered Order No. 96-021, which found that it was in the public interest to grant the applications of ELI and others to operate in Oregon as CLECs in certain designated competitive zones. PUCO concluded that CLEC entry would increase the quality and choice of services, decrease the price for telecommunications services to customers, promote deployment of new technology, and foster innovation. PUCO noted in its order that incumbent LECs would be likely to respond to the competition by lowering prices and creating new service packages and that the LECs would have to improve the quality of their service. (Order at 16.) In making its decision to allow the application, PUCO made the following findings that are pertinent to this litigation:

> As competition takes hold, incumbents and new entrants will likely compete on the basis of customer service. By their very presence in the market, AECs will provide customers with enhanced operational and strategic security, by serving as redundant carriers. The fact that customers will have a choice of service provider is also new. At the very least, competition should improve the quality of service and enhance economic efficiency of all participants in the local exchange market.
>
> In the long term, competition should promote new products, innovation, and the deployment of existing technologies not yet in widespread use. ELI currently plans to offer intraLATA equal access and physical collocation, in addition to the services currently provided by the incumbents. . . .
>
> . . .
>
> Competitive pressure will provide service quality standards that are customer driven and market driven, and not dependent on regulatory monitoring. <u>Because</u>

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> customers will have a choice of providers under a competitive regime, incumbent LECs will have to improve the service quality as well, in order to retain customers and market share. Service outages, repair delays, and delays in service connections become costly for the incumbents when customers can express dissatisfaction by changing carriers.

(Emphasis added.) Order at 20.

26. PUCO and USWC knew that USWC could lose customers to the CLECs if the CLECs provided better service. USWC knew that USWC might not lose customers to CLECs if the CLECs could not provide better service than USWC.

27. PUCO's January 1996 order directed that the CLECs be permitted to interconnect with incumbent LECs on the same terms and conditions that the incumbent LECs had used in the past to interconnect their own telecommunications networks ("bill and keep" arrangements). PUCO declined to adopt recommendations that would give either the LECs or the CLECs the power to unilaterally designate interconnection meet points. PUCO ordered the CLECs and the LECs to negotiate in good faith and establish mutually acceptable interconnection arrangements. (Order at 69.) PUCO also ordered LECs to unbundle loops and other facilities and allow resale of telecommunications services. (Order at 72.)

28. On March 13, 1996, the Washington Utilities and Transportation Commission ("WUTC") issued an order addressing the type of interconnection service that USWC was required to provide to CLECs. WUTC v. U.S. West, Nos. UT-941464, UT-941465, UT-950146, UT-950265, Ninth Supplemental Order Rejecting Tariff

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1 Filings, at 19-20 (Mar. 13, 1996) ("WUTC Ninth Order"). The WUTC
2 ruled in pertinent part:

3 The Commission rejects USWC's proposed language limiting its obligation to provide interconnection
4 service. In proposing this limit, USWC has fundamentally misinterpreted the effect of the interconnection orders.
5 The clear intent of the Fourth Supplemental Order was that each company would be required to build sufficient
6 facilities from meet points back through its network. USWC has an obligation to interconnect with other
7 carriers and deliver the messages originating from the customers of those carriers, set out in Constitution
8 Art. 12, Sec. 19. That section provides that all companies in the business of providing telephone service
9 "shall receive and transmit each other's messages without delay or discrimination." That is a basic duty of every
10 local exchange telephone company in this state, including USWC and its competitors. USWC has an obligation to
11 provide whatever facilities are necessary on its side of meet points to complete local calls that are delivered to
12 it by originating local exchange companies.

13 USWC's argument that all its competitors offer service subject to the availability of facilities and
14 that it therefore can do the same for interconnection is without merit. That argument confuses the circumstances
15 under which a carrier offers services to its customers and those under which one carrier offers service to
16 another carrier. The Commission will not allow any carrier, regardless of the terms offered to its own
17 customers, to condition its obligation to interconnect at meet points and to complete local calls delivered by
18 originating carriers on the availability of facilities.

19 USWC's argument that its interconnection obligation is somehow limited because it is not allowed to charge
20 competitors for the cost of building the facilities used in interconnection also is without merit. USWC's
21 argument suggests that it misunderstands the basis on which we adopted mutual traffic exchange as the interim
22 compensation mechanism. The basis for bill and keep was not a conclusion that interconnection will not cause
23 carriers to incur costs. It is clear that, for both interconnecting companies, costs would be lower if they
24 simply offered service to customers on their own network and did not interconnect with other networks. They do
25 not have the option of offering such limited service. Since interconnection requires each carrier to invest in
26 facilities it otherwise would not require, we found it

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> reasonable, on an interim basis, that each carrier bear those costs and receive, in consideration, the use of the other carrier's interconnection facilities. While USWC will not receive monetary payment from ALECs for provisioning terminating facilities on its side of meet points and completing ALECs' calls during the interim period, USWC also is not required to pay ALECs for their interconnection facilities or call termination. The choice of a compensation mechanism, be it mutual traffic exchange or explicit rates, has no bearing on the mutual obligations of each LEC to interconnect with one another and to terminate one another's messages.

(Emphasis added; footnote omitted.) Id.

29. ELI at various times entered into contracts pertaining to the furnishing of facilities by USWC. ELI also presented orders to USWC for facilities and services from time to time pursuant to arrangements whereby ELI was to designate the needed equipment and services by giving reasonable notice of such requirements, and USWC was to furnish such equipment and services within the reasonable time requested.

USWC FAILED AND REFUSED TO PROVIDE FACILITIES AND SERVICES ORDERED BY ELI OR TO COMPLY WITH STATE REGULATORY COMMISSION ORDERS

30. In the states of Washington, Oregon, and Utah, ELI presented orders to USWC for equipment, facilities, and services upon reasonable advance notice. Despite ELI's orders and notwithstanding the directives of state public utility commissions, USWC substantially failed and refused and continues to substantially fail and refuse to supply the necessary equipment, facilities, and services. Among other things, USWC failed and refused to provide the following:

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a. Interconnection facilities as reasonably ordered by ELI;

b. Switching equipment and trunks as reasonably ordered by ELI and needed to handle ELI's traffic;

c. Other exchange and switching equipment necessary to handle telecommunications traffic, including facilities from the tandem to end offices;

d. Employees necessary to build, install, maintain, and service equipment and facilities; and

e. Ordering procedures and equipment equivalent to those that USWC provides to itself.

31. USWC engaged in acts designed to deter present and future customers of ELI from using or selecting ELI facilities and services and instead to select USWC services and facilities. Among other things, USWC did the following:

a. Blocked telecommunications between USWC's tandem and end offices (USWC has end office to end office trunking in its own network and realizes a much higher grade of service than ELI can because of the absence of direct end office trunking);

b. Failed to tandem 64K ISDN data calls as USWC had represented to ELI that USWC could and would do;

c. Caused calls routed through USWC equipment and facilities to ELI customers and by ELI customers to receive rapid busy signals on an unduly high percentage of calls;

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d. Caused ELI customers to experience disconnects on an unduly high number of calls that were required to be routed through USWC facilities;

e. Failed to inform ELI about facilities problems or shortages until on or after the installation due date;

f. In Salt Lake City, charged various USWC customers long-distance charges for terminating local traffic at ELI prefixes and caused customers to complain to ELI;

g. Bid against ELI on customer line contracts and told the customer that USWC could install in two weeks but that it would take over a month to install the necessary USWC side of facilities if ELI were to win the contract;

h. In certain areas (Salt Lake City, Utah), refused to cooperate in inner duct leasing, as required by the Telecommunications Act of 1996; and

i. Failed and refused to provide equal access to facilities, refused to disclose system capacity or architecture, and discriminated in the quality of telecommunications services and in ordering and provisioning services, so that ELI experienced service outages, repair delays, and delays in service connections.

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32. Initially, USWC failed and refused to allow interconnection at feasible points or to provide facilities and services in a nondiscriminatory manner, such as by allowing interconnection at end offices. Instead, USWC forced ELI to interconnect at points that would require telecommunications traffic to go through a single tandem in huge metropolitan areas, thereby creating a severe bottleneck when traffic from all sources was great enough to overload the capability of the USWC trunking network. On information and belief, ELI alleges that USWC operated its bottleneck trunks in a discriminatory fashion. In the process of assigning priority levels to traffic from different carriers, USWC gave traffic that originated and terminated on its own system top priority and gave traffic that originated with or terminated at ELI customers lower priority. By creating and maintaining a bottleneck, USWC ensured that its own traffic almost always went through. USWC traffic would flow from one of its end offices to another, bypassing the tandem (USWC would never arrange traffic flow for ELI in a similar manner). During peak traffic times, ELI's traffic was almost always subject to a high percentage of call blocking, rapid busy signals, and automatic disconnects. Further, USWC's bottleneck trunks resulted in call blocking not only for outgoing calls that ELI's customers attempted to make, but also for incoming calls that USWC's customers or other carriers' customers sought to make to ELI's customers.

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33. As a result of call blockage, ELI's customers either terminated or cut back service, asserting that the problems were caused by ELI's equipment and facilities, when the problem was being caused by USWC. ELI lost customers and was unable to sell service to new accounts. ELI was compelled to build (at great expense) direct end office trunk groups at an earlier stage and larger in capacity than it would have needed in the absence of network blockage, but the bottleneck interconnections could not be overcome because of shortages of facilities in other parts of USWC's network. USWC refused to reveal its system architecture and capacity so that ELI could avoid bottlenecks on USWC's system.

34. In 1995, when ELI began providing local dial-tone services in the Seattle market, ELI was required to connect its switching equipment directly to USWC's tandem. The connection was intended to provide two-way interconnection, so that in theory calls originating from USWC's customers could be received by ELI's customers and calls from ELI's customers could be received by USWC's customers. USWC's customers were connected to USWC's network at numerous end offices, which at that time numbered about 33. ELI's customers experienced call blocking, rapid busy signals, or automatic disconnects as calls were routed through the tandem to the end offices of USWC and on to USWC's customers. The tandem to end office trunking in Seattle was a bottleneck, which did not allow adequate and proper flow of

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1 traffic and did not provide interconnection of a quality that was
2 equal to USWC's access and use of the facilities.
3 35. ELI did not receive cooperation from USWC in the
4 Seattle area in trying to overcome the bottleneck of USWC's
5 tandem. ELI built direct trunks to USWC's end offices, at its
6 own substantial expense. Despite the new trunks to the end
7 offices, ELI continued to experience call blocking. In addition
8 to forcing ELI to incur build-out expenses of millions of
9 dollars, USWC responded to requests for interconnection of ELI's
10 facilities at the USWC end offices by asserting that USWC lacked
11 switch ports and transport facilities to accommodate the new
12 trunks. USWC's assertion either was false or could have been
13 remedied easily and quickly through the addition of switch ports
14 (interconnection points) and transport facilities.
15 36. On information and belief, ELI alleges that USWC's
16 traffic engineers have the ability to "choke down" ELI's traffic
17 at the USWC switch. ELI can determine from its own equipment how
18 many calls originating in ELI's system are subject to blocking
19 each day, but until recently, ELI has been unable to determine
20 and has not been told how many calls from USWC's customers to ELI
21 customers are blocked. USWC still refuses to give ELI the
22 essential traffic information that would assist ELI in
23 determining inbound call blocking to an ELI customer. The
24 traffic information and system architecture and capacity
25 information would have allowed ELI to plan and build around
26 blockages.

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37. In Portland, ELI also was forced to interconnect with USWC equipment and facilities for ELI connection for ISDN services at a tandem located in downtown Portland, which was represented as capable of transmitting 64K ISDN data calls. The tandem was not capable of transmitting 64K ISDN data calls. Transmission of 64K ISDN data calls was highly important to ELI customers who intended to make clear channel transmissions. Because the tandem was not capable of handling 64K ISDN data calls and because USWC was blocking calls between USWC's tandem and USWC's end offices, ELI was forced to run trunk lines directly from ELI's main DMS switch to the various USWC end offices in Portland, which were ISDN-capable. The equipment in USWC's end offices was then found to be antiquated and inadequate. ELI also needed more capacity between its switch and USWC's offices than what USWC provided, but USWC blocked development by asserting that it could give only periodic allocation of new trunk capacity. USWC asserted that ELI's order for new trunks would simply overload its ability to respond and that ELI should withdraw its order for multiple trunks in several metropolitan areas and replace it with a series of orders for only a few trunks in a single metropolitan area at a time. As a result, ELI lost business and had to issue credits to customers on ISDN business.

38. On information and belief, ELI alleges that USWC has the ability to improve or degrade the quality of service to ELI at USWC's Portland switch (among other things, by changing or

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adding ports to switches or adding trunks). The desired standard of service (and that stipulated in various interim interconnection agreements) is P.01 at the end office, meaning that only one call in 100 is blocked at the end office, and P.005 at the tandem. ELI has experienced a much higher rate of call blocking from USWC's equipment and facilities. Although ELI can evaluate the number of calls originating on its side of the network that do not go through, ELI has generally been unable to obtain information on the number of blocked calls originating on USWC's side of the network that are intended for ELI's customers.

FIRST CLAIM FOR RELIEF

MONOPOLIZATION (15 U.S.C. § 2)

39. ELI incorporates by reference all the allegations in paragraphs 1 through 38 above.

40. USWC had and has monopoly power in the relevant geographic market for local telecommunications services. USWC has a market share in excess of 95 percent of such services in all regional markets involved in this complaint.

41. During 1995, 1996, and 1997, ELI received complaints from customers about severe call blockage, rapid busy signals, disconnects, and other service problems. ELI also was unable to provide local exchange services as promised to its customers.

42. The blockage, busy signals, disconnects, and other problems have occurred within USWC's network. ELI's inability to provide services occurred because USWC failed and refused to

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provide the required interconnection, despite ELI's many requests and demands for interconnection at designated points and for the provision of the needed equipment, facilities, and services. USWC not only failed to provide interconnection points, equipment, facilities, and services as reasonably ordered, but represented on occasion that it had no immediate plans to upgrade its facilities to correct blockage problems or to allow additional trunks and switches to be installed and that it did not intend to provide the required number of employees. USWC continues to refuse to take the steps necessary to resolve blockage problems or interconnect problems and discriminates in its own favor over ELI on interconnection issues.

43. In refusing to furnish the required interconnection points, equipment, or facilities, USWC has acted willfully or with careless disregard for the consequences of its actions. Although state statutes direct USWC to handle ELI's traffic, and state regulatory commissions have ordered USWC to provide equipment and facilities necessary to handle traffic originating from ELI, USWC has failed and refused to follow statutes or regulatory orders. USWC instead has followed a strategy of filing numerous tariffs and of appealing as a matter of course from orders entered against it by public utilities commissions, adding great expense and involvement of ELI time in combating regulatory filings and appeals and thereby further delaying the furnishing of essential equipment and facilities.

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44. ELI has been damaged as a direct consequence of USWC's refusal to provide designated interconnection points, essential equipment, facilities, and services, in the following ways: ELI has lost customers; ELI customers who stayed with ELI have not received requested services and therefore did not pay as contracted; and ELI's ability to solicit customers and furnish additional telecommunications services has been materially reduced and disrupted, all resulting in great loss of revenues and market share to ELI.

45. ELI will suffer substantial and irreparable future harm as a result of USWC's failure and refusal to allow interconnection at designated interconnection points in a nondiscriminatory manner and to provide carriage of traffic in a nondiscriminatory manner. ELI's ability to offer competitive local service depends on adequate interconnection facilities from USWC and nondiscriminatory carriage of traffic to and from ELI's system. ELI is at continued risk of losing additional customers due to service problems caused by USWC's refusal of interconnection points, inadequate interconnection facilities, discriminatory carriage of traffic, and discrimination in service.

46. USWC's (a) refusal to disclose network architecture or capacities; (b) refusal to provide operational interconnection points, adequate essential equipment, facilities, and services for interconnection with ELI in ELI's service areas in Washington, Oregon, Utah, and Arizona; and (c) discrimination

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