numbers 1 through 96, before continuing with 101 to 196, 201 to 296, and so forth. This is a result of the network systems US WEST uses that maintain the numbering conventions of the earlier SLC 96-dominated network. US WEST told ACSI that no guarantee could be made that the correct US WEST ports connect to the corresponding ACSI ports if ACSI uses its numbering scheme.

26. During testing of loop cutovers, on repeated occasions, US WEST proved incapable of connecting the corresponding parts on the collocated ACSI and US WEST equipment, leading to failed cutovers.

27. Several possible solutions for this apparent problem have been raised by ACSI. The first proposal was for US WEST to renumber the SLC 2000 ports after number 96 (a SLC 2000 has 768 ports; the SLC 96 has 96 ports). Port number 97 would be translated as 101, 98 would be 102, and so on. ACSI proceeded to explore this option, but tests on this method of numbering conversion proved disastrous due to US WEST's failure to implement it. ACSI determined that US WEST's success rate in translating the US WEST system to the SLC 2000 system was less than 50 percent. This is utterly unacceptable for ACSI's customers, who would experience an intolerable level of disconnects during cutovers.

28. The second workaround proposed by ACSI was for ACSI to assign port numbers that US WEST could easily translate into its own system. ACSI provided data to US WEST such that US WEST could determine which ACSI port corresponded with each loop terminating on the US WEST distribution frame. However, US WEST was either unable or unwilling to implement this solution for reasons unclear to ACSI.

29. A third, and very inferior, solution ACSI proposed was to lease SLC 96 ports from US WEST. Under this proposal, US WEST would install SLC 96s itself in its end office on ACSI's behalf. ACSI would not need to put in collocation equipment, but would transport the loops from the US WEST SLC 96 to an existing ACSI collocation in

another US WEST end office where it would go over ACSI's network. This proposal was put forth merely as a stop-gap solution, as it would not allow ACSI to get into the market providing facilities-based local exchange service utilizing unbundled loops.

30. Since that time, ACSI has had periodic calls with US WEST and others regarding this issue. Despite ACSI's persistence and its efforts to convince US WEST to adopt one of ACSI's proposals described earlier, US WEST has neither responded nor provided an alternative of its own that would permit ACSI to collocate the SLC 2000 without seriously compromising the advantages of the equipment. Without the successful collocation of the SLC 2000 equipment, ACSI has been unable to offer service to large portions of the Tucson market, namely customers with one to nine lines, contrary to its business plan.

C. US WEST Has Undermined ACSI Efforts To Provide Competitive Service.

31. Because of US WEST's failure to accommodate installation and full operation of the SLC 2000, ACSI is unable to serve customers on a facilities basis who require fewer than ten lines. As a result, one of the principal means of competition in the provision of local exchange services is being denied ACSI in US WEST territory. Instead, ACSI may serve such customers only through resale of US WEST's retail services or if the end user is served by ACSI's own fiber facilities. Additionally, ACSI may serve customers with ten or more lines through a DS1 connection "private line" between the customer's premises and ACSI's switch provided by US WEST or a third party provider, or an equivalent wireless connection obtained from a provider of 38 GHz short haul services. ACSI calls such DS1 connections "Type II."

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32. In addition to its refusal to allow use of ACSI's SLC 2000, US WEST has acted to undermine ACSI's efforts to provide competitive services to end users. This has resulted in problems relative to number portability and interconnection, causing disruption of service to US WEST customers that have signed up with ACSI for which service has not yet been cutover.

33. By disconnecting end users before they have been cutover to ACSI, US WEST has eliminated these customers' phone service for hours at a time, often causing substantial business losses. ACSI, once apprised of such a disconnection by US WEST *after the disconnection has commenced*, has been forced to work diligently to ensure US WEST corrects the problem for *US WEST's own customer*, albeit a future customer of ACSI. However, the responsibility for these problems lies squarely with US WEST.

34. This problem has manifested itself in two ways: cessation of service or commencement of number porting in advance of the confirmed date. Until late last year, when ACSI received a request for service from an existing US WEST customer — *and* the customer was going to access the ACSI network via a US WEST-provided DS1 — ACSI would proceed to order the facility and obtain a firm order confirmation date ("FOC"). The FOC would be the date on which US WEST would "turn up" the DS1 facility and disconnect service to its existing customer, as that customer transferred over to ACSI.

35. If the customer switching to ACSI wished to retain its US WEST number, it could so do through number portability. In its simplest and, to date, most common form, number portability involves the forwarding of a call made to the US WEST number by the US WEST end office formerly serving the end user. The US WEST switch, instead of completing the call, would forward it to the ACSI switch for routing and delivery. The US WEST end office switch accomplishes this by translating the US WEST number to an ACSI-provided number in a manner transparent to the caller and called party. Where the new ACSI subscriber chooses to retain its US WEST number, ACSI

would order number portability at the same time it ordered the connection to the ACSI switch, and the two would be scheduled to occur simultaneously on the FOC date.

36. Alternatively, if ACSI intended to serve the new customer using its own facilities, *i.e.*, not using the US West end office switch and the customer sought to retain its US WEST numbers, then ACSI would set an FOC for both number portability and the discontinuance of US WEST service to the customer. In such cases, ACSI would set the FOC for the same date and time when it expected to have the customer's access to the ACSI switch operational.

37. When proceeding to establish the new customer's service via a US WEST-provided DS1 arrangement, ACSI must first test the installed arrangement before commencing service to the customer. Unfortunately, US WEST often lets ACSI know the DS1 will not be turned up on time only one or two days in advance. This gives ACSI a minimal amount of time to change the order and the FOC date and, apparently, makes it that much more difficult for US WEST to coordinate the new FOC date. It also provides the customer with little notice of the delay, which the customer may blame on the "new carrier," *i.e.*, ACSI.

38. ACSI submits that within *48 hours after the order is placed*, US WEST should be able to assess if the DS1 can be installed on time, *not 48 hours before the facility is to be installed*.

39. Not surprisingly, in light of the foregoing, the majority of the problems occurred on an "original" FOC date that had been changed only one or two days in advance. For example, new customers have been suddenly and unexpectedly disconnected or have partially lost US WEST service because although ACSI changed the order and/or confirmed the new FOC date in advance of the original FOC date, US WEST proceeded to initiate the cut-over, either by disconnecting the customer or porting the number to the ACSI switch, or both on the original FOC date.

40. Disconnects of this variety have occurred on several occasions in Arizona. These disconnects have lasted typically for a few hours, but may affect multiple lines for a customer. On at least one occasion, a single future ACSI customer has experienced multiple disconnects when the FOC was changed more than once.

41. A number of factors make these occurrences particularly egregious. In addition to porting the numbers and/or discontinuing service early (*i.e.*, after ACSI confirmed the FOC date), US WEST makes no attempt to confirm that ACSI's number corresponding to the ported number is operational. In addition, US WEST does not let ACSI or the customer know in advance. To add insult to injury, US WEST has even blamed "ACSI service" in response to their customers' inquiries. The apparent cause, however, is US WEST's failure to coordinate internally the scheduling or rescheduling of an FOC or supplemental FOC among all the US WEST work groups involved.

42. Following several such occurrences in Arizona and New Mexico, counsel for ACSI and US WEST over several weeks in the fall of 1997 discussed how such breakdowns could be handled more appropriately and resolved more efficiently in the future. In these meetings, US WEST took full responsibility for those occasions in which it began to port numbers or disconnected service prior to the FOC. US WEST, acknowledging the damage this could cause a new competitor such as ACSI, agreed to write a letter of apology to any customer to whom this occurred, exonerating ACSI. Unfortunately, US WEST has not followed this promised practice with any consistency.

43. Rather than continue to be plagued by these repeated failures of US WEST to coordinate cutovers to ACSI, ACSI has jury-rigged a process to minimize the potential this will happen in the future. It is an unacceptable solution, however, even in the short run, because it actually introduces delays in ACSI's provision of service to new customers. In particular, to avoid these disconnects, ACSI will *first* install and test the Type II facility before ordering and establishing an FOC with US WEST for the cutover.

While this has worked reasonably well in overcoming the original problems caused by US WEST, in the broader, more relevant sense, it is totally unsatisfactory because it introduces a substantial delay in the provision of service after the Type II connection is operational.

44. Also, because ACSI must wait until the DS1 is installed and tested, for example, it cannot schedule the installers to complete service turn-up at the time of cutover in advance. In many cases, it can be difficult to schedule installers on short notice. At any rate, short-notice scheduling is typically more costly. These delays are also more costly because ACSI must pay for the US WEST DS1 for a period without receiving offsetting end-user revenues from local exchange services.

45. Such delays have a true competitive impact because many customers may not be willing to tolerate the extended delay and uncertainty. (US WEST will not put in the DS1 for ACSI while US WEST still has the customer.) Indeed, ACSI's "fix" makes it look to the prospective customer as though ACSI's ability to bring on a new customer is uncoordinated and inept, when in reality it is seeking to compensate for US WEST's failures.

CLAIMS FOR RELIEF

CLAIM ONE

US WEST HAS FAILED TO PROVIDE ACSI WITH INTERCONNECTION AS REQUIRED BY THE 1996 ACT

46. ACSI incorporates herein by reference thereto paragraphs 1 to 45 of this Complaint as though fully set forth in this paragraph.

47. Section 251(c)(2) of the 1996 Act requires US WEST to provide interconnection for ACSI's facilities and equipment with US WEST's network for the transmission and routing of telephone exchange service and exchange access at any

technically feasible point within US WEST's network that is at least equal in quality to that provided by US WEST to itself *and* on rates, terms, and conditions that are just, reasonable, and nondiscriminatory *and* in accordance with the terms and conditions of the Interconnection Agreement between the parties.

48. US WEST has refused or failed to provide interconnection for ACSI's facilities and equipment with US WEST's network as provided for in Section 251(c)(2).

49. The terms and conditions under which US WEST will provide ACSI interconnection are neither just nor reasonable.

50. Such terms and conditions are discriminatory.

51. Such terms and conditions are not in accordance with the parties' Interconnection Agreement.

52. US WEST's refusal and failure are in violation of Section 251(c)(2) of the 1996 Act, have impeded competition in US WEST's Arizona service territory, and have harmed ACSI's customers and Arizona consumers.

CLAIM TWO

US WEST HAS FAILED TO PROVIDE ACSI WITH UNBUNDLED NETWORK ELEMENTS AS REQUIRED BY THE 1996 ACT

53. ACSI incorporates herein by reference thereto paragraphs 1 to 45 of this Complaint as though fully set forth in this paragraph.

54. Section 251(c)(3) of the 1996 Act requires incumbent LECs to make available to any requesting telecommunications carrier for the provision of a telecommunications service nondiscriminatory access to unbundled network elements at any technically feasible point on rates, terms and conditions that are just, reasonable, and nondiscriminatory and in accordance with the terms and conditions of the Interconnection Agreement. 47 U.S.C. § 251(c)(3).

55. US WEST has refused or failed to provide access to ACSI to unbundled loop network elements on terms and conditions that are just, reasonable, and nondiscriminatory, or are in accordance with the Interconnection Agreement.

56. US WEST's refusal and failure are in violation of Section 251(c)(3) of the Act, have impeded competition in US WEST's Arizona service territory, and have harmed ACSI's customers and Arizona consumers.

CLAIM THREE

US WEST HAS FAILED TO PROVIDE ACSI WITH COLLOCATION AS REQUIRED BY THE 1996 ACT

57. ACSI incorporates herein by reference thereto paragraphs 1 to 45 of this Complaint as though fully set forth in this paragraph.

58. Section 251(c)(6) of the 1996 Act requires incumbent LECs to provide for physical or, under certain conditions, virtual collocation of equipment necessary for interconnection of access to unbundled network elements on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.

59. ACSI has sought virtual collocation of equipment necessary for interconnection and for access to unbundled network elements at US WEST end offices.

60. US WEST has refused or failed to provide ACSI with virtual collocation of equipment necessary for interconnection or access to unbundled network elements on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.

61. US WEST's refusal and failure are in violation of Section 251(c)(6) of the Act, have impeded competition in US WEST's Arizona service territory, and have harmed ACSI's customers and Arizona consumers.

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CLAIM FOUR

US WEST HAS FAILED TO PROVIDE ACSI WITH NUMBER PORTABILITY AS REQUIRED BY THE 1996 ACT

62. ACSI incorporates by reference thereto paragraphs 1 to 45 of this Complaint as though fully set forth in this paragraph.

63. Pursuant to section 251(b)(2) of the 1996 Act and 47 C.F.R. §52.23(a)(6) and (7), ILECs, such as US West, are required to provide CLECs, such as ACSI, with number portability in a manner which does not result in any degradation of service quality or network reliability when it is implemented or when a customer switches service.

64. ACSI has sought number portability from US West.

65. US WEST's failure to provide number portability, and/or the manner in which US WEST has provided number portability, has violated the 1996 Act and its implementing regulations as well as the Interconnection Agreement.

CLAIM FIVE

US WEST HAS DISCRIMINATED AGAINST ACSI IN VIOLATION OF ARIZONA LAW

66. ACSI incorporates herein by reference thereto paragraphs 1 to 45 of this Complaint as though fully set forth in this paragraph.

67. US WEST has discriminated against ACSI in failing to provide Interconnection Services and Unbundled Network Elements in violation of A.R.S. § 40-334 and Art. 15, § 12 of the Arizona Constitution.

68. US WEST's violation has impeded competition in US WEST's Arizona service territory and has harmed ACSI's customers and Arizona consumers.

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CLAIM SIX

US WEST HAS VIOLATED THE ORDER OF THIS COMMISSION APPROVING THE INTERCONNECTION AGREEMENT

69. ACSI incorporates herein by reference thereto paragraphs 1 to 45 of this Complaint as though fully set forth in this paragraph.

70. US WEST has failed to provide Interconnection Services and Unbundled Network Elements with ACSI as provided for under this Commission's Decision No. 60123, which approved an Interconnection Agreement between US WEST and ACSI, finding the terms of the Interconnection Agreement complied with and were consistent with the Telecommunications Act of 1996, applicable FCC interconnection rules and the ACC's rules concerning interconnection and unbundling — all in violation of A.R.S. § 40-246.

71. US WEST's violation has impeded competition in US WEST's Arizona service territory and has harmed ACSI's customers and Arizona consumers.

CLAIM SEVEN

US WEST HAS VIOLATED ARIZONA LAW AND COMMISSION RULES REQUIRING INTERCONNECTION

72. ACSI incorporates herein by reference thereto paragraphs 1 to 45 of this Complaint as though fully set forth in this paragraph.

73. US WEST has violated Arizona law and Commission Rules requiring Interconnection Services and Unbundled Network Elements to ACSI is anticompetitive, prevents the development of competition in telecommunication services in Arizona, deprives Arizona consumers access to a competitive market for telecommunications services and violates the terms, purpose and intent of the Commission's Competitive Telecommunications Services Rules (A.A.C. Title 14, Ch. 2, Art. 11) and Interconnection and Unbundling Rules (A.A.C. Title 14, Ch. 2, Art. 13).

CLAIM EIGHT

US WEST HAS FAILED TO PROVIDE JUST, REASONABLE, ADEQUATE AND SUFFICIENT INTERCONNECTION SERVICES

74. ACSI incorporates herein by reference thereto paragraphs 1 to 45 of this Complaint as though fully set forth in this paragraph.

75. US WEST's provision of Interconnection Services and Unbundled Network Elements as required by A.A.C. R14-2-1112, A.A.C. R14-2-1302(ii) and Title 14, Chapter 2, Article 13 of the Arizona Administrative Code are unjust, unreasonable, inadequate and insufficient in violation of A.R.S. § 40-321.A.

76. US WEST's violation has impeded competition in US WEST's Arizona service territory and has harmed ACSI's customers and Arizona consumers.

CLAIM NINE

US WEST HAS FAILED TO PROVIDE INTERCONNECTION, COLLOCATION, UNBUNDLED NETWORK ELEMENTS, AND NUMBER PORTABILITY TO ACSI IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE ACSI/US WEST INTERCONNECTION AGREEMENT

77. ACSI incorporates herein by reference hereto paragraphs 1 to 45 of this Complaint as though fully set forth in this paragraph.

78. The Interconnection Agreement sets forth terms and conditions under which ACSI is to order and US WEST is to provide collocation services, interconnection, unbundled network elements, and number portability.

79. US WEST has refused or failed to provide collocation, interconnection, unbundled network elements, and number portability to ACSI in accordance with the terms and conditions in the Interconnection Agreement.

80. US WEST's refusal and failure are a violation of the Interconnection Agreement. These violations have impeded competition in US WEST's Arizona service territory and have harmed ACSI's customers and Arizona consumers.

Prayer for Relief

WHEREFORE, ACSI requests that the Commission issue an Order:

1. Finding US WEST's action described herein to constitutes (i) a failure to provide interconnection in accordance with Section 251(c)(2); (ii) a failure to provide access to unbundled loops in accordance with Section 251(c)(3); (iii) a failure to provide collocation in accordance with Section 251(c)(6); (iv) a failure to provide number portability in accordance with Section 251(b)(2) of the 1996 Act; (v) a failure to provide nondiscriminatory, adequate, sufficient and reasonable telecommunications services in violation of state law; (vi) a violation of the Commission's order approving the Interconnection Agreement and (vii) a violation of the Interconnection Agreement.

2. Immediately directing US WEST to provide just, reasonable, nondiscriminatory, adequate and sufficient interconnection services, collocation, unbundled network elements and number portability to ACSI.

3. Immediately directing US WEST to comply with the Interconnection Agreement, including installing collocation of SLC 2000 equipment as requested by ACSI and provisioning of unbundled loops and number portability in accordance with the Interconnection Agreement;

4. Immediately directing US WEST, in its arrangements with ACSI, to comply with the ordering intervals and other performance standards set forth in the operational supports systems proposals of the Association of Local Telecommunications Services (copy appended hereto as Exhibit "A") until such time as the Commission adopts such procedures to which US WEST is bound in a general proceeding;

. . .

5. Granting such other relief as the Commission deems just and proper.

March 17, 1998.

Respectfully submitted,

AMERICAN COMMUNICATIONS SERVICES, INC.

By: _____

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To new file "AT&T / US West - Formal Complaints"

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Pltg clerk
- send copy to J. Sigle, CT NM
- create NM US WEST Complaint file

March 17, 1998

BY HAND DELIVERY

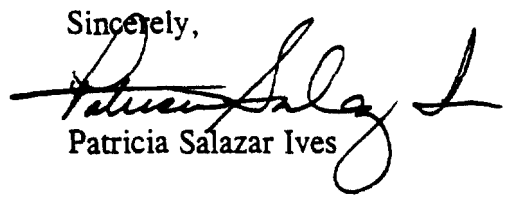
Orlando Romero, Chief Clerk
State Corporation Commission
P.E.R.A. Building
Santa Fe, New Mexico 87504

RE: IN THE MATTER OF THE COMPLAINT BY AMERICAN COMMUNICATIONS SERVICES, INC., AGAINST U S WEST COMMUNICATIONS, INC.; DOCKET NO. 98-_____-TC

Dear Mr. Romero:

I am enclosing for filing with the Commission the original and five copies of the Complaint of American Communications Services, Inc., against U S WEST Communications, Inc.

Sincerely,



Patricia Salazar Ives

Enclosures

cc w/enc: Thomas W. Olson, Esq.

PSIL\2682.C

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BEFORE THE NEW MEXICO STATE CORPORATION COMMISSION

IN THE MATTER OF THE COMPLAINT BY AMERICAN COMMUNICATIONS SERVICES, INC., AGAINST U S WEST COMMUNICATIONS, INC. **DOCKET NO. 98-____-TC**

COMPLAINT

American Communications Services, Inc., on behalf of itself and its New Mexico operating subsidiary ("ACSI"), brings this complaint against U S WEST Communications, Inc. ("U S WEST") to compel U S WEST to provide reasonable, adequate and sufficient interconnection between U S WEST and ACSI, including reasonable collocation. U S WEST's current failures regarding interconnection include a pattern of delay, misinformation and unwillingness to coordinate with ACSI to achieve even the most basic interconnection and related testing. As a result of U S WEST's failure to provide timely and adequate interconnection services, ACSI has been prevented from bringing competition to New Mexico telecommunications consumers. This result is in violation of New Mexico law and the federal Communications Act of 1934 (as amended by the Telecommunications Act of 1996 ("1996 Act")), contrary to the public interest, and in breach of the Interconnection Agreement between ACSI and U S WEST that has been approved by the New Mexico State Corporation Commission ("Commission"). In support of its complaint, and consistent with the requirements of Article XI, Section 7 of the Constitution of the State of New Mexico, Section 63-9A-11 of the New Mexico Telecommunications Act ("State Act"), Rule 22 of the Rules of Procedure of New Mexico State Corporation Commission ("SCC Rules), and other applicable New Mexico statutes, ACSI states:

THE PARTIES

1. ACSI, through its operating subsidiaries, is a competitive local exchange carrier certificated to provide dedicated and switched local exchange service in New Mexico and other states, including Colorado and New Mexico in U S WEST's service territory. In New Mexico, the Company currently operates local fiber optic networks in metropolitan Albuquerque. Its subsidiary, American Communication Services of Albuquerque, Inc. ("ACSI Albuquerque"), holds a certificate of convenience and necessity to provide competitive telecommunications services. ACSI has purchased and installed a Lucent Technologies 5ESS switch in Albuquerque, New Mexico. The Company currently provides competitive local exchange services in New Mexico via the resale of U S WEST's wholesale products. ACSI's address is 13 National Business Parkway, Suite 100, Annapolis Junction, Maryland 20701, and ACSI Albuquerque's address is 505 Marquette N.W., Suite 1605, Albuquerque, New Mexico 87102.

2. U S WEST is a Regional Bell Operating Company that, among other things, provides switched local exchange and other telecommunications services in fourteen western and southwestern states. It is an incumbent local exchange carrier ("ILEC") in each of these states as defined in 47 U.S.C. § 251(h). U S WEST is the incumbent provider of switched local exchange services in the markets currently served by ACSI in New Mexico. U S WEST's address is 1801 California Street, Denver Colorado 80202, and its principal place of business in New Mexico is Station 1201, Albuquerque, New Mexico 87103-1355.

JURISDICTION

3. The Commission has jurisdiction over U S WEST because U S WEST is a certified provider of public telecommunications service, as defined in NMSA 1978, § 63-9A-3 (Repl. Pamp. 1989), and is a telephone company, as defined in N.M. Const. art. XI, § 7. The Commission has jurisdiction to entertain and resolve this complaint by virtue of N.M. Const. art. XI, § 7, § 63-9A-11, and Rule 22.

STATEMENT OF CLAIMS

Overview and Background

4. Congress, in order to promote competition in the telecommunications industry, passed the 1996 Act, which was signed into law in February, 1996. Pub. L. No. 104-104, 110 Stat. 61 ("1996 Act").[1] A principal concern of the 1996 Act was the introduction of competition in the local exchange market dominated for decades by the monopoly ILECs, including U S WEST. To enable new entrants to bring competitive local services to market, the 1996 Act imposed several obligations upon ILECs. Specifically, ILECs are required to provide reasonable and nondiscriminatory interconnection of their networks with the facilities and equipment of requesting telecommunications carriers for the transmission and routing of telephone exchange service "that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, and any other party to which the carrier provides interconnection." 47 U.S.C. § 251(c)(2)(C); *see also* Id. § 251(c)(2)(D). The 1996 Act also required ILECs to provide requesting telecommunications

[1] The 1996 Act amended the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.* ("1934 Act").

carriers with nondiscriminatory and reasonable access to U S WEST's network through unbundled network elements ("UNEs"), to be used by telecommunications carriers to provide subscribers with services. 47 U.S.C. § 251(c)(3). A principal means of obtaining access to UNEs is collocation of ACSI-provided equipment at U S WEST's facilities. *Id.* § 251(c)(6). Collocation requires not only that U S WEST provide ACSI access to U S WEST's physical location but also that U S WEST connect ACSI to U S WEST's loops and other UNEs.

5. The 1996 Act also imposed obligations upon local exchange carriers to provide number portability in accordance with requirements prescribed by the FCC. *Id.* § 251(b)(2). Among the requirements adopted by the FCC is the obligation to provide number portability that "[d]oes not result in any degradation in service quality or network reliability when implemented" or "when customers switch carriers." 47 C.F.R. §§ 52.23(a)(6),(7)(1997).

6. ACSI, through its local exchange operating subsidiaries, is one of the first facilities-based providers of competitive local service in New Mexico. Currently ACSI competes in New Mexico's local exchange services market using two methods: first, by reselling U S WEST's services, pursuant to an Interconnection Agreement entered into with U S WEST,[2] and approved by the Commission. Second, ACSI has installed its own switch in Albuquerque in order to support local exchange services provided through a combination of ACSI's own facilities and UNEs obtained from U S WEST and accessed through collocation arrangements with U S WEST. The switch is also critical to ACSI's ability to originate traffic that is destined for subscribers on U S WEST's network

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[2] *See infra* ¶ 8.

over interconnection facilities. Conversely, the switch enables ACSI to transport traffic originated on U S WEST's network destined from ACSI's customers. However, the success of entry into the local exchange market is dependent on U S WEST's compliance with the Commission-approved Interconnection Agreement with ACSI, this State's telecommunications laws, and the 1996 Act.

7. To date, throughout its service territory, including New Mexico, U S WEST's approach to collocation, including provisioning and its actual provisioning performance, indicates that U S WEST is unwilling to meet its obligations under the Interconnection Agreement, New Mexico law, or the 1996 Act. In New Mexico, ACSI has experienced unreasonable difficulties and delays in response to requests for interconnecting facilities, collocation, unbundled network elements, transferring customers and services from U S WEST to ACSI, and number portability. These difficulties and delays — accounts of which are described below — are both discriminatory and unreasonable and, as such, constitute failures to comply with (i) the Interconnection Agreement, (ii) New Mexico law, and (iii) the 1996 Act. In addition, ACSI has been the target of systemic anticompetitive activity by U S WEST. U S WEST's failure to comply with the terms of the Interconnection Agreement with ACSI and state and federal laws negatively impacts the ability of ACSI to attract and retain customers and, as a result, jeopardizes the development of competitive markets in New Mexico. Thus, it is in the public interest that this Commission act immediately on this complaint so that additional immediate and irreparable injury to ACSI and consumers in U S WEST's New Mexico service territory can be avoided.

The Interconnection Agreement

8. ACSI and U S WEST entered into an Interconnection Agreement which sets forth the terms and conditions for ACSI's interconnection, including collocation, with U S WEST's network. While portions of the Agreement were arbitrated, the overwhelming majority of all provisions, including all of those relevant to this complaint, were voluntarily negotiated by the parties. Pursuant to Section 252(e) of the 1996 Act, codified at 47 U.S.C. § 252(e), and New Mexico law, the Interconnection Agreement was approved by the Commission in Docket No. 96-307-TC. In its Findings of Fact, Conclusions of Law and Order issued on December 6, 1996, in Docket No. 96-307-TC, the Commission found:

> 7. The Commission's resolution of the issues herein is just, reasonable and in the public interest and is in the public interest.

Id., p. 32.

9. The Commission-approved Interconnection Agreement specifically sets forth the obligations of both ACSI and U S WEST with respect to the collocation of ACSI's equipment at U S WEST's central office facilities for purposes of access to UNEs and interconnection of the ACSI and U S WEST networks. The Agreement provides *inter alia*, that:

- ACSI may establish points of interconnection with U S WEST through expanded interconnection collocation arrangements maintained at U S WEST's end office or tandem switch buildings. Interconnection Agreement, §§ IV.E.1.

- Such interconnection may be through virtual collocation or physical collocation. *Id.*, § IV.E.1.

- Virtual collocation will be offered via the terms and conditions in U S WEST's FCC Tariff No. 5. *Id.*, § IV.E.1.a.

- U S WEST will provide ACSI collocated access to its unbundled loops at each of U S WEST's wire centers. *Id.*, §§ VI.A.1.c. & d.

- U S WEST will not in any way hinder ACSI from deploying modern DLC equipment, such as TR303 equipment, throughout the U S WEST network. *Id.*, §§ VI.A.1.k.

- U S WEST will not discriminate against ACSI and ACSI customers and shall provide parity treatment to ACSI and ACSI customers as compared to its own end users. *Id.*, §§ VI.A.1.j.

10. The procedures by which ACSI may obtain virtual collocation to access UNEs are contained within U S WEST Tariff FCC No. 5, § 21.3. These include the submission of a VEIC[3] order form, specifying the interconnected designated equipment ("IDE") to be installed in the U S WEST wire center. *Id.* §§ 21.3.1.D., 21.3.2.A. Upon receiving the order for collocation, U S WEST will only receive from the interconnected equipment *U S WEST determines* is basic transmission terminating equipment *conforming to industry standards*. *Id.* § 21.3.4.B.4. Upon approval of the VEIC order, U S WEST is responsible for installation and working cooperatively with ACSI to conduct joint testing and maintenance. *Id.* §§ 21.3.1.G, & 21.3.3.D. U S WEST is also obliged to "ensure that the IDE is engineered, standard designed, and installation detailed-designed to meet both the customer's specified needs and to ensure capability with [U S WEST] equipment and operating systems." *Id.* § 21.3.1.U.

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[3] Virtual Expanded Interconnection-Collocation.

11. The Interconnection Agreement also provides that U S WEST will offer interim service provider number portability to ACSI, enabling former U S WEST customers to retain their telephone numbers when they switch to ACSI. Agreement § V.A.1. Number portability, when requested, is to be provided "upon the coordinated or simultaneous termination of the first [read "U S WEST"] Exchange Service and activation of the second [read "ACSI"] Exchange Service." Id. The Agreement further provides that, where a former U S WEST customer requests number portability, "[U S WEST] will route the forwarded traffic to [ACSI] over the appropriate trunk groups." *Id.* § V.A.1.a.

12. *All* of the provisions in the Agreement cited above were entered into by U S WEST and ACSI voluntarily, and were approved by the Commission.

U S WEST's Failure to Provide Adequate, Sufficient and Reasonable Interconnection Services, Including Access to Unbundled Network Elements and Collocation.

13. A fundamental requirement for local telephone service competition is the ability of ACSI to interconnect its network with U S WEST's network facilities. Interconnection is required so that, as necessary for call completion, local and long distance calls which travel over U S WEST's network can be connected to ACSI's network and thereafter to ACSI's local telephone customers, and vice versa. Interconnection is also required to connect, through collocation, ACSI's network to U S WEST UNEs, such as loops, which are used to provide customers service in conjunction with ACSI's own network facilities.

A. U S WEST Has Proved Itself Incapable of Handling ACSI's Requests for Service Cut-Overs.

14. Under the Interconnection Agreement, U S WEST must process ACSI's requests to move U S WEST customers that have decided to switch to ACSI as their local exchange carrier. The process of moving the customers off of U S WEST's network onto ACSI's network is known as a "cutover."

15. The Interconnection Agreement also mutually obligates the parties to accommodate the physical linking of U S WEST's network to ACSI's network. A principal means to this end is "collocation" whereby, for example, U S WEST permits ACSI to place equipment within U S WEST's central office for purposes of interconnection.

16. Such collocated equipment may typically be used to accommodate what ACSI calls "Off-Net" local exchange services because the ACSI customer's telephone is connected directly with U S WEST facilities, *i.e.*, "off" ACSI's network, albeit the service is ultimately routed to ACSI's switch through collocated or other interconnection facilities, regardless of the other termination point of the communications link, *i.e.*, the called party. Specifically, to provide Off-Net services, ACSI leases from U S WEST an unbundled loop, which is a featureless connection from the customer's premises to the U S WEST's end office serving that customer. The loop, which terminates on a distribution frame within the U S WEST end office, is then connected by U S WEST to ACSI's network, via collocated equipment contained in space leased by ACSI within U S WEST's end office. (In some cases, an Off-Net customer's loop may be connected to ACSI's network via U S WEST switching and interoffice transport facilities carrying the communications to collocated ACSI

equipment in another U S WEST end office, at which point it is transported to ACSI's switching facilities.) Thus, the unbundled loop is the first step to giving the customer physical access to the ACSI network.

17. To facilitate Off-Net service to a U S WEST customer that wishes to retain its telephone number when it switches to ACSI, U S WEST forwards the calls to and from the customer's phone number to the corresponding ACSI phone number in a process known as number portability. When this functions smoothly, ACSI then is able to provide full support to the customer as its new local exchange carrier.

18. Since entering into the Interconnection Agreement, ACSI has conducted tests in an effort to ascertain U S WEST's capability to process orders for unbundled loops. Over a series of tests, U S WEST has manifested an inability to process the orders on numerous occasions. These botched orders would, if they occurred with real customers, lead to lost ACSI business and a diminishment in ACSI's good will. For example,

- U S WEST has provided ACSI with inconsistent instructions regarding the use of Network Channel Interface Codes and Billing Account Number codes, leading to delayed cutovers after ACSI received Firm Order Confirmation dates for such cutovers.

- Cutovers simply occurred at times and dates different than on Firm Order Commitments received from U S WEST.

- Number portability was not coordinated to begin at the time of the cutover, which in actual situations would prevent customers from receiving calls.

- U S WEST had no procedures in place to attempt to resolve issues experienced during a cutover; cutovers are simply rescheduled through a

separate work group, leading to unacceptable delays on top of the service disruption due to the botched cut-over.

19. ACSI also repeatedly found that work groups within U S WEST responsible for the cutovers were not coordinated. These groups carried out their respective functions without any synchronization.

20. Moreover, U S WEST failed to adhere to procedures established between the parties, including notification of ACSI, during "coordinated" cutovers. Time and again, ACSI was forced to initiate calls to U S WEST to learn when a cutover was to begin and when it was completed. During coordinated cutovers, U S WEST is to call ACSI to confirm the validity of the order 48 hours prior to the cutover, immediately prior to cutover, and at the end of the cut.

21. In short, U S WEST has proven itself incapable of processing an even modest level of orders, hardly at all representative of those anticipated in the case of moderately robust competition. If facilities-based competition is to gain a foothold in New Mexico, then such procedures must be implemented. Furthermore, the Interconnection Agreement, as well as the 1996 Act and New Mexico Law, require that U S WEST be able to process cutovers, including number portability, in an efficient, pro-competitive, non-discriminatory manner. U S WEST is unable and unready to do so.

B. U S WEST Has Denied ACSI Use Of Compatible, But Appropriate, Collocation Technology.

22. To provide local telephone service in as efficient a manner as possible, ACSI selected SLC 2000 loop concentrator equipment for those U S WEST end offices in which ACSI collocated.