ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of: Petition by ICG TELECOM GROUP, INC. for Arbitration of an Interconnection Agreement with BELLSOUTH TELECOMMUNICATIONS, INC. Pursuant to *Section* 252(b) of the Telecommunications Act of 1996.	Docket No. 990691-TP Filed: August 2, 1999

DIRECT TESTIMONY AND EXHIBITS

OF

KAREN NOTSUND

ON BEHALF OF

ICG TELECOM GROUP, INC.

DOCUMENT NUMBER-DATE
09090 AUG-2 8
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:	)	
	)	
Petition by ICG TELECOM GROUP, INC.	)	**Docket No. 990691-TP**
for Arbitration of an Interconnection	)	
Agreement with BELLSOUTH	)	**Filed: August 2, 1999**
TELECOMMUNICATIONS, INC. Pursuant to	)	
Section 252(b) of the Telecommunications	)	
Act of 1996.	)	
	)	

DIRECT TESTIMONY AND EXHIBITS

OF

KAREN NOTSUND

ON BEHALF OF

ICG TELECOM GROUP, INC.

DOCUMENT NUMBER-DATE
09090 AUG-2 99
FPSC-RECORDS/REPORTING

1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2 **DIRECT TESTIMONY AND EXHIBITS**

3 **OF**

4 **KAREN NOTSUND**

5 **ON BEHALF OF ICG TELECOM GROUP, INC.**

6 **DOCKET NO. 990691-TP**

7 **Q. PLEASE STATE YOUR NAME, ADDRESS AND EMPLOYMENT.**

8 A. My name is Karen Notsund. I am Senior Director of Governmental Affairs for
9 ICG Communications. My office is located at 180 Grand Avenue, Oakland,
10 California.

11 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND WORK**
12 **EXPERIENCE.**

13 A. I received a Bachelor of Science Degree from the University of Oregon,
14 Eugene in 1983 and a Masters in Agricultural Economics from the University of
15 California, Davis in 1986. I also have completed Ph.D. level course work. I began
16 work in the telecommunications industry in 1995 as Senior Regulatory Analyst for the
17 California Public Utilities Commission. My primary responsibilities concerned
18 investigations into the economic implications of market restructuring for
19 telecommunications consumers. In 1995, I began working in regulatory affairs for the
20 Western Region of AT&T Local Services/TCG. I was promoted from Regulatory
21 Manager to the Director of Regulatory Affairs in June 1997. In that position, I was
22 responsible for TCG's regulatory interests in six states. In May 1999, I joined ICG

1 as a Senior Director of Government Affairs.

2 **Q. HAVE YOU TESTIFIED IN STATE REGULATORY PROCEEDINGS**
3 **BEFORE?**

4 A. Yes. On behalf of ICG, I recently participated in a technical workshop before
5 an Administrative Law Judge ("ALJ") of the California Public Utilities Commission on
6 the appropriate performance measures incentives plan for GTE California (GTEC").
7 I was the lead presenter of a proposal supported by a coalition of competitive local
8 exchange carriers. In February of this year, I presented a similar plan on behalf of
9 AT&T, to the same ALJ to be applied to Pacific Bell. I made a similar proposal to the
10 Nevada Commission staff in 1999. On behalf of TCG, I have testified before the
11 state public service commissions of California, Colorado, Utah and Arizona.

12 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

13 A. The purpose of my testimony is to discuss the need for performance measures
14 and benchmarks in the BellSouth Agreement.

15 **Q. WHY SHOULD THE COMMISSION ADOPT PERFORMANCE**
16 **MEASURES AND ENFORCEMENT MECHANISMS?**

17 A. BellSouth refuses to negotiate on this important issue. Therefore,
18 Commission intervention is needed to resolve it.

19 **Q. WHAT IS YOUR BASIS FOR YOUR VIEW THAT THIS COMMISSION**
20 **CAN PRESCRIBE PERFORMANCE STANDARDS AND ENFORCEMENT**
21 **MECHANISMS?**

22 A. The Telecommunications Act of 1996 (the "Act") and implementing FCC

1 rules require that incumbent local exchange companies provide
2 interconnection, access to unbundled network elements and resale at parity to
3 that which it provides to itself. *See* 47 U.S.C. § 251(c)(2)(C); 47 C.F.R. § 51-
4 503(a)(3). Access to network elements must be provided on a
5 nondiscriminatory basis, and the level of access must be equal in terms of
6 "quality, accuracy, and timeliness." *Application of Ameritech Michigan Pursuant*
7 *to § 271 of the Communications Act of 1934, as Amended, to Provide In-*
8 *Region, InterLATA Services in Michigan*, CC Docket 96-98, ¶ 139. Also, in its
9 decision rejecting BellSouth's second Louisiana Section 271 application, the
10 FCC cited the Louisiana Commission's requirement that BellSouth develop
11 performance standards and, indeed, applauded the Louisiana Commission for
12 taking these steps. *In the Matter of Application of BellSouth Corporation,*
13 *BellSouth Telecommunications, Inc., and BellSouth Long Distance, for*
14 *Provisions of In-Region, InterLATA Services in Louisiana,* CC Docket 98-121,
15 ¶ 93.

16 **Q. WHY ARE PERFORMANCE MEASURES AND ENFORCEMENT**
17 **MECHANISMS NECESSARY?**

18 A. A facilities-based carrier such as ICG is dependent upon BellSouth for
19 essential network elements. Preordering, ordering, provisioning, billing, repair
20 and maintenance of these facilities is provided by BellSouth. ICG is similarly
21 dependent upon BellSouth with respect to resold services. If BellSouth's
22 performance on any of these functions falls short, ICG's customer holds ICG

1 responsible. ICG's customer does not care if it was really BellSouth's fault. In
2 the customer's eyes, ICG is responsible. This dependent relationship is what
3 makes this issue so important to the development of local competition.
4 Performance standards and enforcement mechanisms must be put in place to
5 hold BellSouth accountable. Otherwise, BellSouth has no incentive to perform
6 at a level that will enable ICG to meet the expectations of its customers.

7 **Q. HAS THERE BEEN RECENT ACTIVITY BY OTHER STATE**
8 **COMMISSIONS ON THE ISSUE OF PERFORMANCE MEASURES AND**
9 **ENFORCEMENT MECHANISMS?**

10 A. Yes. The Texas Public Service Commission staff has conducted an
11 investigation of performance measures in the context of its ongoing Section 271
12 docket. After ICG filed its petition in this docket, the Texas Commission staff
13 filed its recommendation on performance measures to be adopted by that
14 Commission. It is widely anticipated that the staff report will be adopted by the
15 Commission. ICG will be glad to furnish that report to the Commission and
16 Staff upon request.

17 Also on July 1, 1999 an Administrative Law Judge (ALJ) of the California
18 Public Utilities Commission (CPUC) issued a draft decision adopting 44
19 performance measurements. Nearly all of these measures were agreed to by
20 Pacific Bell and GTE California. The draft decision includes an attachment that
21 describes each of the performance measurements. In addition, the following
22 information is included for each performance measure: calculation formula,

1 level of disaggregation, reporting requirements, geographic level, measurable
2 standard (i.e., retail analog or benchmark), business rules and notes. Each of
3 these components is necessary to actually implement the performance
4 measures. Without this degree of specificity, much of the implementation
5 would be left to the ILECs and will be invisible to either the Commission or to
6 the competing alternative local exchange providers ("ALECs"). ICG will provide
7 a copy of this draft decision to the Commission and Staff upon request.
8 The CPUC has held a technical workshop to hear all parties' positions
9 on how to define a violation of the performance standards and on the amounts
10 to be paid in the event of a violation. A separate decision will be issued on
11 these issues. Only when a framework like this is in place will the Commission
12 know whether the BellSouth is meeting its obligation to provide performance
13 parity, as required by the Act, and have a mechanism in place to enforce the
14 obligation.
15 **Q. HAS BELLSOUTH ACKNOWLEDGED THE NEED FOR**
16 **PERFORMANCE STANDARDS AND ENFORCEMENT MECHANISMS?**
17 A. Yes. BellSouth has proposed a set of performance measures to assure
18 nondiscriminatory access to unbundled network elements to the Federal
19 Communications Commission ("FCC"). The BellSouth proposal also includes
20 payments which BellSouth would make to ALECs for failure to meet the
21 performance benchmarks established. A copy of the ex parte filing by
22 BellSouth regarding this proposal is attached as Exhibit No. ____ (KN-1) to my

1 testimony.

2 **Q. HAS BELLSOUTH OFFERED TO INCLUDE THIS PROPOSAL IN THE**
3 **BELLSOUTH/ICG INTERCONNECTION AGREEMENT?**

4 A. No. BellSouth has been unwilling to negotiate performance measures
5 and corresponding enforcement mechanisms with ICG. The proposal to the
6 FCC was part of BellSouth's effort to win Section 271 approval. From what
7 ICG can determine, BellSouth's proposal is conditioned on FCC approval of a
8 BellSouth Section 271 application.

9 **Q. WHAT IS REQUIRED TO DEVELOP AN EFFECTIVE SET OF**
10 **PERFORMANCE STANDARDS AND ENFORCEMENT MECHANISMS?**

11 A. Four steps must be taken. First, all relevant performance measurements
12 must be identified at a level of disaggregation such that a like-to-like
13 comparison can be made between the performance the ILEC provides to itself
14 and to the ALEC. For example, a performance measurement of the Average
15 Response Time to a Firm Order Commitment must be disaggregated by
16 interface type, and service group type. Without this level of disaggregation, a
17 comparison would meaningless, i.e., an apples-to-oranges comparison. The
18 second step, is to collect monthly data on the performance of the ILEC, the
19 ILEC's affiliates, if any, each ALEC individually and in the aggregate for each
20 of the submeasures. The third step is to apply a statistical test to the data to
21 evaluate whether the performance given to the ALEC is "at least equal" to that
22 the ILEC gave to itself. The fourth step is to develop the parity benchmark that

1 then triggers an enforcement mechanism (a payment) for not having provided
2 parity service. This requires the establishment of critical values that define
3 when an ILEC has fallen short of a benchmark.

4 **Q. WHY IS COMMISSION ACTION NECESSARY ON THIS ISSUE?**

5 A. BellSouth will not negotiate on this issue. The Commission must take
6 action, or ALECs will be left completely without recourse.

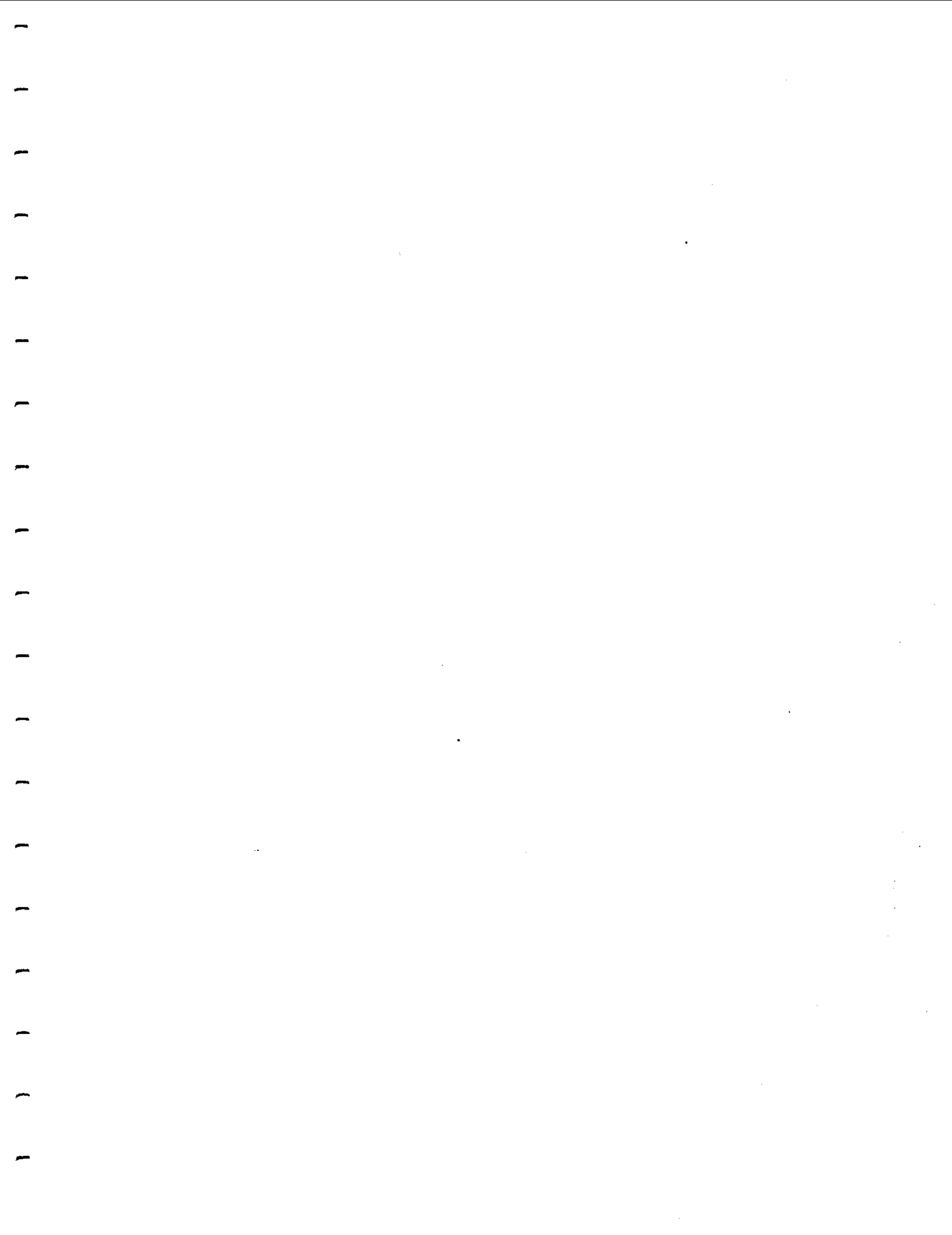
7 **Q. ARE YOU AWARE THAT THE COMMISSION HAS TAKEN THE**
8 **POSITION THAT IT LACKS AUTHORITY TO IMPOSE LIQUIDATED**
9 **DAMAGES PROVISIONS IN ARBITRATED AGREEMENTS?**

10 A. Yes, I understand that the Commission has expressed that view in
11 several proceedings. However, I would like to bring to the Commission's
12 attention a very recent ruling by a Federal District Court in Colorado that, under
13 federal law, the Colorado Public Utilities Commission has authority in
14 arbitration proceedings to include a provision on liquidated damages in an
15 interconnection agreement. A copy of that ruling is attached as Exhibit No. ___
16 (KN-2). Although I am not an attorney, it appears that under reasoning of the
17 court, any State public service commission could rely on federal law –
18 specifically, sections 251 and 252 of the Communications Act of 1934, as
19 amended – as authority for including liquidated damages provisions in an
20 arbitrated agreement.

21 **Q. IS ICG ASKING THE COMMISSION TO ARBITRATE THIS ISSUE?**

22 A. No. ICG believes that the Commission should initiate a generic

1 proceeding to consider appropriate performance measurements and
2 enforcement mechanisms. As ICG has reviewed the developments at the
3 Texas and California commissions and BellSouth's movement on this issue at
4 the FCC, ICG has concluded this issue is not appropriate for a two-party
5 arbitration proceeding. The issue of performance standards and enforcement
6 mechanisms is one of industry-wide importance. A generic proceeding aimed
7 at a single set of performance standards and enforcement mechanisms is the
8 only practical approach. To give this important issue the careful, in-depth
9 consideration it deserves will require expert testimony and a separate
10 proceeding where the views of the entire industry can be voiced. ICG believes
11 that the actions under consideration by the Texas and California Commissions
12 provide a sound basis for action by the Florida Public Service Commission.
13 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**
14 A. Yes.
15
16
17
18
19
20
21
22



Proposal to Establish Voluntary Self Enforcing Penalties

FCC discussion

6/24/99

Self Enforcing Penalties Overall Objective

- Voluntarily establish penalties acceptable to the FCC as part of a package for 271 approval
- Assumptions
  - FCC will accept penalties in lieu of requiring 3rd party CLEC testing of OSS
  - FCC will accept penalties and approve an early 271 application before completion of some scheduled OSS enhancements (OSS'99)

Self Enforcing Penalties Characteristics

- Not applied until after 271 approval in a specific state
- Designed to prevent BST "backsliding" on CLEC service
- Legally binding (implement through contracts)
- Penalties will be "Meaningful" and "Significant"
- Limited number of measurements
- Statistical or "bright line" test to easily verify "parity"
- CLECs retain rights to file complaints with PSC or FCC

Self Enforcing Penalties Proposal

- 9 key measures of timeliness or quality
- Each measure is tested vs. a retail analog
- Initial tests will be for "materiality", until a method for statistical validation is established
- Two product groups will be initially offered as subcategories (**Retail** (including UNE loop+port combinations), and **UNEs**)
- Penalties are derived from the concept of liquidated damages

Self Enforcing Penalties Proposal

- Penalties are "triggered" by a parity miss in any of the 13 separate subcategories of the nine measurements. These measurements are made at the state level to test for overall parity for all CLECs doing business in that subcategory.
- Once the penalty is "triggered", payments are made to each CLEC based on their activity in that particular subcategory.

Self Enforcing Penalties Proposal

- EXAMPLE:
  - The parity test for Installation Timeliness (% Due Dates Missed) fails for Georgia for the month of October in the subcategory RESALE & COMBOS
  - All CLECs in Georgia having any missed appointments in this category would receive a penalty payment of ($38 * their number of missed appointments). (The $38 figure approximates the aggregate NRC for this group of services)

Self Enforcing Penalties
Proposal Details

CATEGORY	METRIC	SUBCATEGORY	PARITY DETERMINATION	Materiality Test	PENALTY
INSTALLATION					NRC=Non Recurring Charge
					RC=Recurring Charge
Installation Timeliness (State)	% DD Missed	RESALE UNE	RA RA	1% variance 1% Variance from (retail-res/bus dispatch)	Resale NRC * Missed Appts UNE NRC * Missed Appts
Installation Quality (State)	% Report w/in 4 days	RESALE UNE	RA RA	1% variance 1% Variance from (retail-res/bus)	50% monthly Resale RC* # of reports 50% monthly UNE RC* # of reports
MAINTENANCE					
Repair Timeliness (State)	% Missed Repair Appts	RESALE UNE	RA RA	1% variance 1% variance from (retail res/bus dispatch)	50% monthly Resale RC* # of reports 50% monthly UNE RC* # of reports
Repair Quality (State)	Repeated report rate	RESALE UNE	RA RA	1% variance 1% variance from (retail-res/bus-dispatch)	50% monthly Resale RC* # of reports 50% monthly UNE RC* # of reports

6/24/99

Self Enforcing Penalties
Proposal Details

BILLING					
Billing (Regional)	Usage Timeliness		RA	1 day variance	>1 day = 25% * monthly ODUF/ADUF billing
(Regional)	Invoice Timeliness	RESALE (CRIS) UNE (CRIS UNE + CABS)	RA BENCHMARK	1 day variance 1 day variance	.000493 * total monthly bill for each 1 day out of parity
OTHER					
OSS (Regional)	Pre-ordering and ordering OSS Availability		RA	1% difference aggregated across access to all systems	Credit for 5% of total order volume at a rate of $20/per order handled for each 1% disparity in access.
Collocation (individual case)	% DD Missed		BENCHMARK	No Due dates missed	% percent * NRC / week beyond Due date, capped at 25%
Trunking (State)	Trunk Blockage		RA	Any 2 hours month >0.5 difference in aggregate blockage	Any 2 hours/ month > 0.5% difference triggers an increase in Reciprocal Compensation Usage payments based on the difference in actual blockage for the hours "missed"

6/24/99

Comparison of ILEC Measurement/Penalty proposals

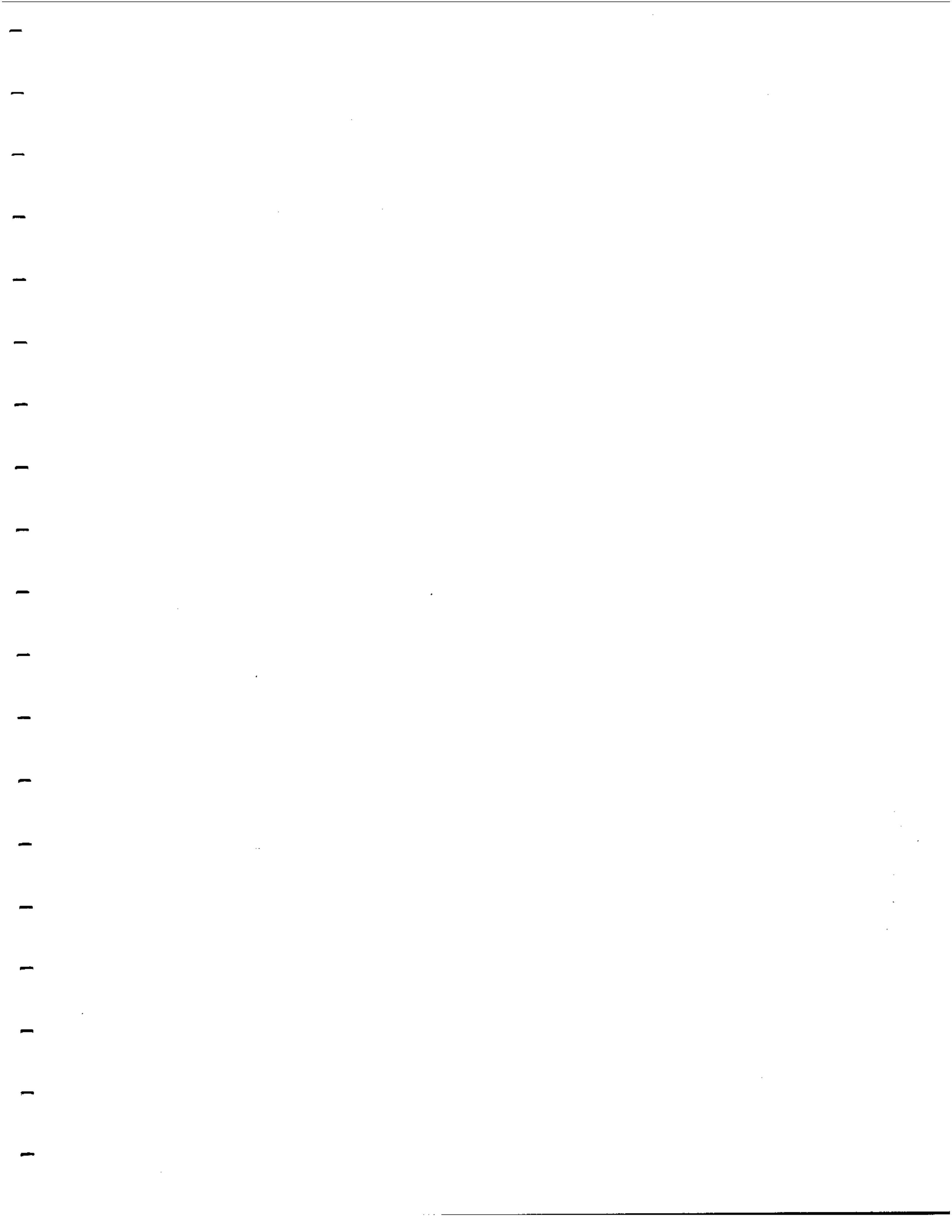
COMPANY NAME	NUMBER OF MEASUREMENTS					PENALTY STRUCTURE	PENALTY DISTRIBUTION	COMMENTS
	PROCESS MSMTS.	PENALTY Y/N	OUTCOME MSMTS.	PENALTY Y/N	TOTAL MSMTS. With PENALTIES			
BellSouth	0	N	14	Y	14	Aggregate Trigger CLEC specific payments; RA	CLECs	Materiality Adjusted jackknife monthly
Nevada Bell	21x	Y	26x	Y	47	RA & benchmarks	PSC (fines)	z-test monthly
GTE								
Sprint								
Bell Atlantic / NYNEX	18	Y	22	Y	40	CLEC Specific & aggregate	CLECs - "market adjustments	weighted z scores quarterly
Pacific Bell/SBC	17	?	48	?	65	CLEC specific	?	?
Ameritech	5x	Y	13x	Y	18x	CLEC specific RA & Benchmarks NRC & RC	CLECs	z score multi-level analysis quarterly

x - Actual # of measurements is driven by product disaggregation.

6/24/99

Self Enforcing Penalties
Summary

- BellSouth's proposed measures meet all the criteria discussed in our previous meetings
  - "Meaningful" and "Significant"
  - Limited number of measurements
  - Outcome oriented rather than process oriented
  - Statistical or "bright line" test to easily verify "parity"
- The proposed measures demonstrate parity for all CLECs as a whole - the ultimate goal of the process, but compensate individual CLECs for parity failures
- The proposed measures are simpler and present a more understandable picture of the effect on a CLEC's customer than those enacted or proposed by other ILECs



FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

JUL 22 1999

JAMES R. MANSPEAKER
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Wiley Y. Daniel

Civil Action No. **97 - D - 152 (Consolidated with Civil Action Nos. 97-D-387, 97-D-1667, 97-D-2047, 97-D-2096 and 98-D-934)**

US WEST COMMUNICATIONS, INC., a Colorado corporation,

Plaintiff,

v.

ROBERT J. HIX, et al.,

Defendants.

FINDINGS OF FACT & CONCLUSIONS OF LAW

DANIEL, Judge

This case involves the Plaintiff, US West Communications, Inc., and the other parties' efforts to challenge certain interconnection agreements approved by the Colorado Public Utilities Commission pursuant to the Telecommunications Act of 1996 (hereinafter "Telco Act"). The Telco Act fundamentally restructured local telephone markets, ending the monopolies that States historically granted to local exchange carriers (LECs) and subjected incumbent LECs to an array of duties intended to facilitate market entry, including the obligation under 47 U.S.C. § 251(c) to share their market with competitors. The other telecommunication parties to this action are competitive local exchange carriers (CLECs) that seek to compete in the local telephone market that has been historically controlled by US West.

Under the Telco Act, when the parties were unable to reach agreement as to the

provisions of interconnection agreements, the Colorado Public Utilities Commission became empowered to function as an arbitrator and to decide the terms and conditions of interconnection agreements or those portions thereof where the parties disagreed. Pursuant to 47 U.S.C. § 252(e)(6), a law suit was duly filed in this Court which asked the Court to determine if the Colorado Public Utilities Commission's decisions were consistent with the Telco Act.

The current action before the Court arises from US West and the other companies' dissatisfaction with various aspects of the interconnection agreements approved by the Colorado Public Utilities Commission. The Court heard oral argument on some of the pending matters on December 21, 1998, and will decide the following issues through this Order: (1) US West's challenge to the imposition of "branding" requirements by the Colorado Public Utilities Commission (COPUC); (2) US West's challenge to the imposition of rights-of-way requirements in the AT&T/MCI agreements; (3) US West's challenge to the imposition of various other requirements in the AT&T/MCI agreements; (4) MCI's challenges to the COPUC's failure to include detailed performance standards and a non-compliance mechanism in the interconnection agreements; and (5) US West's challenge to the imposition of liquidated damages and penalties provisions.[1]

---

[1]The decisions included in this Order are not impacted by the Supreme Court's decision in AT&T Corp., et al. v. Iowa Utilities Bd., et al., 119 S.Ct. 721 (1999). That decision, while reversing aspects of the Eight Circuit's decision in Iowa Utilities Bd. v. FCC, 120 F.3d 753 (8th Cir. 1997), affirmed the FCC's authority to promulgate rules and regulations interpreting the Telco Act.

I. "Branding" Requirements Imposed by the COPUC[2]

Through the Tenth Claim for Relief of its September 29, 1997 Complaint, US West argues that Part A, §26 of its interconnection agreements with MCI and AT&T violate the First Amendment because that section requires it to represent to MCI's and AT&T's customers that US West is acting on behalf of MCI and AT&T and to remain silent about its own products and services.[3] That is, US West argues that the provision unlawfully requires it to speak on behalf of its competitors and that it unlawfully requires US West to remain silent about its own services. MCI and AT&T argue that §26 does not violate the First Amendment, and that it is a lawful provision designed to eliminate customer confusion and to promote competition. This Court applies the de novo standard of review because US West's First Amendment claim raises a question of federal law. Bose Corp. v. Consumers Union, 466 U.S. 485, 508 n.27 (1984)(applying the de novo standard of review to a First Amendment issue).

Under the Telco Act, MCI and AT&T are legally entitled to the use of facilities and services they lease from US West. When they use those facilities or resell services to provide local service to Colorado consumers, the new entrant becomes the local service provider for those customers. The COPUC determined that when MCI and AT&T lease or purchase US West's facilities and services, they should be entitled to identify or "brand" themselves as the provider of those services. The COPUC further

---

[2] This claim was dismissed as to defendant Sprint. See Order filed Sept. 16, 1998, at 2-4.

[3] The USWC - MCI Agreement is identical to the USWC - AT&T Agreement.

determined that certain "branding" provisions were required to be included in the parties' agreements in order to avoid customer confusion, and ruled that when US West comes into contact with MCI's or AT&T's customers, US West should be required to inform the customers that MCI or AT&T is providing their local service. (Decision No. C96-1231, Docket No. 96A-345T, Decision Regarding Petition of AT & T for Arbitration, J.A. Vol. 10, Tab 93, at R. 10350-52). The COPUC's decision was subsequently incorporated into §26 of the parties' interconnection agreement.[4]

This issue involves the regulation of commercial speech, and therefore the Court must apply the four-prong test articulated by the Supreme Court in Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n of New York, 447 U.S. 557, 566 (1980). Under Central Hudson, when determining the constitutionality of state regulation of commercial speech, courts must consider the following criteria: (1) whether the regulated speech concerns lawful activity and is not misleading such that the First

---

[4] Section 26 states the following:

> 26.1 In all cases in which USWC has control over handling of services MCI may provide using services provided by USWC under this Agreement, USWC shall, at MCI's sole discretion, brand any and all such services at all points of customer contact exclusively as MCI services, or otherwise as MCI may specify, or such services shall be provided with no brand at all, as MCI shall determine. USWC may not unreasonably interfere with branding by MCI.
>
> 26.2 MCI shall provide the exclusive interface to MCI subscribers, except as MCI shall otherwise specify. In those instances where MCI requires USWC personnel or systems to interface with MCI subscribers, such USWC personnel shall identify themselves as representing MCI, or such brand as MCI may specify, and shall not identify themselves as representing USWC or any other entity.

USWC-MCI Agreement, Part A, §26 (J.A. Vol. 13, Tab 128, at R. 26167); USWC-AT&T Agreement, Part A, §26 (J.A. Vol. 13, Tab 126, at R. 25020).

Amendment applies; (2) whether the governmental interest advanced by the regulation is substantial; (3) whether the challenged regulation directly promotes the government interest asserted by the state; and (4) whether the regulation is more extensive than is necessary to serve the government interest. Id. Applying this test to the facts of this case, the Court finds that the "branding" provisions do not violate US West's commercial speech First Amendment rights.

First, when MCI or AT&T provides local service by using network elements or reselling services purchased from US West, §26 ensures that customers are not mislead and are properly informed of the identity of their service provider. If US West were permitted to identify itself as the service provider for MCI or AT&T customers, customers could be mislead and US West would gain an unfair competitive advantage. Second, the government has a substantial interest in avoiding customer confusion regarding who is providing a customer's local telecommunications service and in preventing US West, the LEC, from undermining the competition the Telco Act is designed to promote. Third, §26 has been carefully tailored to promote the government's interest in promoting competition in the local telecommunications market by avoiding confusion regarding the identity of a local service provider. Finally, I find that this provision goes no further than is necessary to achieve the goal of the Telco Act. The provision requires US West to identify accurately who a customer's service provider is, but imposes no affirmative obligation on US West to market MCI's or AT&T's services to consumers. US West is not restricted from advertising or otherwise identifying its own brand in any manner it chooses whenever it is acting on its own behalf.

US West's argument that the agreement unlawfully compels it to speak on behalf of its competitors is groundless. Because §26 only requires US West to disclose factual information about its products or services, there can be no First Amendment violation. See, e.g., Zauderer v. Office of Disciplinary Counsel, 471 U.S. 626, 651 (1985). In addition, §26 does not require US West to remain silent about its products and services. Unlike the cases cited by US West in its opening brief, §26 does not include a blanket prohibition against US West's ability to advertise services. For all of these reasons, the Court finds that US West's Tenth Claim for Relief set forth in the September 29, 1997 Complaint should be DISMISSED.

II. US West's Challenge to the Imposition of Rights-of-Way Requirements

The Ninth Claim for relief in US West's September 29, 1997 Complaint asserts that the COPUC included unlawful rights-of-way requirements in the interconnection agreements, in violation of 47 U.S.C. §§ 251(b) and 224(f)(1). Specifically, US West argues that Attachment 6, §3.5 of the MCI & AT&T agreements violates the Telco Act because it requires US West to expand its existing rights-of-way on behalf of the CLECs.[5] US West further claims that several sections of Attachment 6 violate the Telco

---

[5] Attachment 6, §3.5 of the MCI and AT&T agreements states:

> USWC shall offer the use of such Poles, ducts, conduits and [Rights of Way ("ROW")] it has obtained from a third party to [AT&T/MCI] to the extent the agreement or arrangement for such does not prohibit USWC from granting such rights to [AT&T/MCI]. They shall be offered to [AT&T/MCI] on the same terms as are offered to USWC. USWC shall exercise its eminent domain authority when necessary to expand an existing ROW over private property in order to accommodate a request from [AT&T/MCI] for access to such ROW. [AT&T/MCI] shall reimburse USWC for USWC's reasonable costs, if any, incurred as a result of the exercise of its eminent domain authority on behalf of [AT&T/MCI] in accordance with the provisions of this Section 3.5.

Act by precluding US West from reserving any capacity to meet its own projected or potential needs. Because US West's challenge is based upon the assertion that the COPUC lacked the authority to impose these requirements, the Court will apply the de novo standard set forth in US West Communications, Inc. v. Hix, 986 F. Supp. 13 (D. Colo. 1997). See also, GTE v. Morrison, 6 F. Supp.2d 517, 523-524 (E.D. Va. 1998).

At least one other federal district court has rejected the same arguments advanced by US West on this issue based upon the FCC's First Report and Order, In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 F.C.C.R. 15499 (1996) ("Local Competition Order"). See US West Communications, Inc. v. AT & T Communications, No. C97-1320R, slip op. at 10-12 (W.D. Wash. July 21, 1998); MCI Telecomm. Corp. v. US West Communications, Inc., No. C97-1580R, slip op. at 9-11 (W.D. Wash. July 21, 1998). I likewise reject US West's claim, because I conclude that it is inconsistent with binding rules promulgated by the FCC.

Section 251(b)(4) of the Act imposes on each local exchange carrier "[t]he duty 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 [47 U.S.C. §224]." 47 U.S.C. §251(b)(4). Section 224(f)(1) requires that a "utility shall provide . . . any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it." 47 U.S.C. §224(f)(1). US West is a utility and a local exchange carrier under

---

USWC-MCI/AT&T Agreement, Attachment 6, §3.5 (J.A. Vol. 13, Tab 126 at 25151).

these provisions, and is therefore required to provide MCI and AT&T access to its rights-of-way.

In its Local Competition Order, the FCC addressed whether an incumbent LEC, such as US West, is required to provide access to its rights-of-way and expand their rights-of-way on behalf of CLECs like MCI or AT&T. The FCC concluded that because a utility such as US West "is able to take the steps necessary to expand capacity if its own needs require such an expansion," the principle of nondiscrimination requires that it do so, even as to rights-of-way held by the utility, on behalf of other telecommunications carriers. Local Competition Order ¶ 1162. Furthermore, the FCC has rejected the argument asserted by US West. Local Competition Order ¶1181 states:

> We disagree with those utilities that contend that they should not be forced to exercise their powers of eminent domain to establish new rights-of-way for the benefit of third parties. We believe that the utility should be expected to exercise its eminent domain authority to expand an existing right-of-way over private property in order to accommodate a request for access, just as it would be required to modify its poles or conduits to permit attachments. Congress seems to have contemplated an exercise of eminent domain authority in such cases when it made provisions for an owner of a right of way that "intends to modify or alter such . . . right of way . . . ."

Id. (ellipses in original).

The COPUC was required to apply the FCC's Local Competition Order in conducting the arbitration and in approving the Agreement. See 47 U.S.C. §252(c)(1), (e)(2)(B); Local Competition Order ¶134; see also Chrysler Corp. v. Brown, 441 U.S. 281, 295-96 (1979) (noting that it is "well established" that agency regulations have the force and effect of law). The FCC's rules are likewise binding on this Court. See AT&T Communications, Inc. v. Pacific Bell, No. C97-0080 SI, 1998 WL 246652, at *2 (N.D.

Cal. May 11, 1998)(stating that "This Court may not inquire into the validity of an FCC regulation," and "FCC regulations have the force of law and are binding upon state PUC's and federal district courts"); Southwestern Bell v. AT&T, No. A97-CA-132 SS, slip op. at 3 (W.D. Tex. Aug. 31, 1998)(stating that "FCC rules and regulations which were upheld by the Eighth Circuit . . . are controlling and not subject to collateral attack here"); AT&T v. BellSouth, 7 F.Supp 2d. 661,674 (E.D.N.C. 1998)(stating that "it is not within this Court's authority to review the propriety of an FCC regulation . . . . Instead, BellSouth's only recourse to challenge any of the FCC's rules is to proceed directly to the Court of Appeals."); see also FCC v. ITT World Communications, Inc., 466 U.S. 463, 468 (1984) (stating that, "[e]xclusive jurisdiction for review of final FCC orders . . . lies in the Court of Appeals."); 28 U.S.C. § 2342(l).[6] The Eighth Circuit affirmed these provisions of the Local Competition Order, and these provisions were not affected by the recent Supreme Court decision. AT&T Corp. v. Iowa Utilities Bd., 119 S. Ct. 721 (1999); Iowa Utilities Bd. v. FCC, 120 F.3d 753, 819 n. 39 (8th Cir. 1997).

Notwithstanding these directives, US West argues that Local Competition Order ¶1179 requires consideration of state law in determining whether an incumbent LEC must expand its rights-of-way on behalf of CLECs, and because any telecommunications carrier may exercise eminent domain powers under state law, US West is not required to do so on their behalf. US West's argument is misplaced.

---

[6]US West argued at the December 21, 1998 hearing, that the Court should follow the decision in US West Communications, Inc. v. AT&T Communications, No. 97-1575, 1998 WL 897025 (D. Or. Dec. 10, 1998). The Court declines to do so and instead joins the other federal district courts cited above in not permitting collateral attacks on the FCC's Local Competition Order.

Paragraph 1179 requires consideration of state law in determining "[t]he scope of a utility's ownership or control of an easement or right-of-way." Id. "[T]he access obligations of section 224(f) apply when, as a matter of state law, the utility owns or controls the right-of-way to the extent necessary to permit such action." Id. Thus, once a determination has been made under state law that an incumbent LEC owns or controls a right-of-way, the incumbent has the obligation to expand that right-of-way in accordance with federal law as set forth in the Telco Act and FCC rules. State law is irrelevant to that inquiry. See US West Communications, Inc. v. AT & T Communications, No. C97-1320R, slip. op. at 11-12 (W.D. Wash. July 21, 1998); MCI Telecomm Corp. v US West Communications, Inc., No. C97-1508R, slip. op. at 10-11 (W.D. Wash. July 21, 1998).

Colorado law provides telecommunications providers, including US West, with the right to use public rights-of-way to create rights-of-way on state-owned land, to contract with private individuals for rights-of-way, and to use eminent domain to acquire title, rights-of-way and easements from private individuals. See Colo. Rev. Stat. §§38-2-101, 38-5.5-101 et seq. Rights-of-way over which US West has attained ownership or control as determined by Colorado law are thus subject to the obligation imposed by the Telco Act and FCC rules to expand those rights-of-way on behalf of AT&T and MCI.

I agree with the decisions entered by the United States District Court for the Western District of Washington in US West Communications, Inc. v. AT & T Communications, No. C97-1320R, slip. op. at 10-12 (W.D. Wash. July 21, 1998) and MCI Telecomm. Corp. v. US West Communications, Inc., No. C97-1508R, slip. op. at 9-11 (W.D. Wash. July 21, 1998). These decisions required US West to expand its

rights-of-way by exercising eminent domain on behalf of CLECs. This result is consistent with the Telco Act and its implementing regulations. That fact that either incumbent LECs or new entrants may exercise the power of eminent domain under state law does not alter the fact that once US West's ownership or control of a right-of-way is established under state law, "a competing carrier can have access to US West's right-of-way, and consequently, US West's existing network." MCI Telecomm. Corp., No. C97-1508R, slip. op. at 10. The MCI and AT&T agreements appropriately require US West to provide access to its rights-of-way and to expand its rights-of-way, while providing adequate protections to US West. This result incorporates into the agreements the requirements of §251(b)(4) of the Telco Act and the FCC's implementing regulations.

US West's second argument that §§3.6,3.13,3.18,3.19,3.20, and 3.21 of Attachment 6 to the agreements violate the Telco Act by precluding US West from reserving any capacity to meet its own projected or potential needs is without merit. The Local Competition Order rejects US West's argument, concluding that the nondiscrimination requirement of §224(f) prohibits incumbent LECs from reserving excess capacity for future needs when new entrants request use of such capacity. See Local Competition Order ¶1170 (stating that, "[p]ermitting an incumbent LEC, for example, to reserve space for local exchange service, to the detriment of a would-be entrant into the local exchange business, would favor the future needs of the incumbent LEC over the current needs of the new LEC").[7]

[7]An exception to the nondiscrimination requirement applies to "a utility providing electric service," which may deny a "telecommunications carrier access to its poles,

Moreover, the agreements actually do accommodate US West's legitimate need for capacity. For example, US West "may consider safety and reliability in determining whether it has capacity available for [AT&T/MCI's] use." USWC-MCI/AT&T Agreement, Attachment 6, §3.16 (J.A. Vol. 13, Tab 126, at 25152). US West may also retain a "maintenance spare" of certain facilities as provided in the agreements. Id. at §3.6 (J.A. Vol. 13, Tab 126, at 25151). I agree with the District Court's decisions in US West Communications, Inc. v. AT & T Communications, No. C97-1320R, slip op. at 11 (W.D. Wash. July 21, 1998), and MCI Telecomm. Corp. v. US West Communications, Inc., No. C97-1508R, slip op. at 11 (W.D. Wash. July 21, 1998). In those decisions, the court found that any extra space "either will be used or remain unused, not remain reserved for US West indefinitely, unless safety dictates such a use." US West Communications, Inc., No. C97-1320R, slip op. at 12. Thus, the provisions that US West disputes do not violate the Act, and the COPUC did not act arbitrarily or capriciously or exceed its authority in imposing them. Therefore, the Ninth Claim for Relief set forth in US West's September 29, 1997 Complaint must be DISMISSED.

III. The Imposition of Various Other Requirements in the AT&T/MCI Agreements

US West contends in Count Thirteen of its September 29, 1997 Complaint that certain provisions of the interconnection agreements with AT&T and MCI impose "onerous and unlawful" requirements. US West argues that the COPUC violated the

---

ducts conduits, or rights-of-way, on a nondiscriminatory basis where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes." Id. §224(f)(2). US West is not an electric utility, and the FCC refused to expand this exception to include non-electric utilities. Local Competition Order ¶1173.

Telco Act and exceeded the scope of its authority under the Act by imposing requirements that are "onerous and unlawful." Specifically, US West challenges five provisions of the agreements which require that: (1) US West consult with AT&T in advance of filing tariffs (USWC-MCI/AT&T Agreement, Part A §3.4 (J.A. Vol. 13, Tab 126, at 25006)); (2) US West provide advance notice to AT&T and MCI of the availability of new products for market testing (USWC-MCI/AT&T Agreement, Attachment 2, §8.2 (J.A. Vol. 13, Tab 126, at 25049)); (3) US West grant AT&T and MCI access to the Intelligent Loop Concentrator/Multiplexer and testing system equipment for routine testing and fault isolation (USWC-MCI/AT&T Agreement, Attachment 3, §4.4.1.3.6 (J.A. Vol. 13, Tab 126, at 25058)); (4) US West test local switching features at AT&T's and MCI's request (USWC-MCI/AT&T Agreement, Attachment 3, §15.2.6.1.2 (J.A. Vol. 13, Tab 126, at 25115)); and (5) US West compensate AT&T and MCI for auditing costs (USWC-MCI/AT&T Agreement, Part A, §23.3 (J.A. Vol. 13, Tab 126, at 25017). US West characterizes each of these challenges as a claim that the COPUC failed to comply with the Telco Act. AT&T and MCI argue that the Telco Act and FCC regulations grant the COPUC the authority to impose these provisions, and that the record supports them as just, reasonable and nondiscriminatory.

I apply the de novo standard of review to this issue insofar as it involves the COPUC's substantive compliance with the Telco Act and the implementing regulations, and the arbitrary and capricious standard with respect to any other issues. See US West Communications, Inc. v. Hix, 986 F. Supp. 13,18-19 (D. Colo. 1997); GTE South v. Morrison, 6 F. Supp. 2d 517, 523-24 (E.D. Va. 1998). The Telco Act grants broad

authority to state commissions to impose reasonable terms and conditions as part of the arbitration and appeal of interconnection agreements. For example, § 251(c)(2) of the Act imposes upon incumbent local exchange carriers the "duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network . . . on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions" of §§251 and 252 of the Act. 47 U.S.C. § 251(c)(2). The Telco Act further authorizes a state commission to resolve any "open issues" submitted to it in the arbitration and to impose on the parties such conditions as are necessary to carry out the provisions of § 251 of the Act and FCC rules. See 47 U.S.C. §§ 252(b)(4), 252(c).

Moreover, in its First Report and Order, the FCC stated that it "expect[s] the states will implement the general nondiscrimination rules set forth herein by adopting, inter alia, specific rules . . . and any other specific conditions they deem necessary to provide new entrants . . . with a meaningful opportunity to compete in the local exchange markets." Local Competition Order ¶ 310. This grant of authority enables state PUCs to fashion interconnection agreements into "working documents." See TCG Milwaukee, Inc. V. Public Serv. Comm'n, 980 F. Supp. 992, 1000 (W.D. Wisc. 1997).

After a review of this voluminous record, the Court has not discovered evidence suggesting that the contested provisions would do anything but give AT&T and MCI the opportunity to compete in the manner contemplated by the Telco Act. Specifically, the requirements that US West consult with AT&T and MCI in advance of filing tariffs and provide advance notice of the availability of new products do not give AT&T and MCI a competitive advantage over US West. Rather, these provisions place the CLECs on

equal footing with US West, the incumbent LEC, by minimizing the time in which US West will enjoy a competitive advantage over AT&T and MCI. Similarly, the requirements that US West allow for testing by AT&T and MCI ensure that US West's network is performing according to the Agreements, and that AT&T and MCI are receiving the quality of services for which they bargained. The final provision regarding auditing expenses deters anticompetitive and discriminatory behavior by effectively adopting a "loser pays" standard. This provision requires that the audited party pay for audit expenses in the event of a significant discrepancy in any invoice or in charges paid or payable by the other party. I find that each of these provisions is just, reasonable, nondiscriminatory, and designed to ensure workable interconnection agreements that encourage meaningful and fair competition in the local exchange market. The COPUC did not exceed its authority under the Telco Act in imposing these provisions, and therefore the Thirteenth Claim of US West's September 29, 1997 Complaint is DISMISSED.

IV. MCI's Challenges to the COPUC's Failure to Include Detailed Performance Standards and a Non-Compliance Mechanism in the Interconnection Agreements

In Count Eleven of its September 22, 1997 Complaint, MCI challenges the COPUC's decision not to include detailed performance standards and a non-compliance mechanism in MCI's interconnection agreement with US West. The COPUC mandated that US West provide service to MCI that is equal in quality to the service that US West provides itself. Decision No. C96-1337 at 36, A.103; see also US West-MCI Interconnection Agreement, Part A, § 1.E, A.128 at 2; Att. 4 § 2.1, A.128 at 1. As this issue deals with the COPUC's procedural and substantive compliance with

the Telco Act, I will review this issue de novo. US West Communications, Inc. v. Hix, 986 F. Supp. 13, 19 (D. Colo. 1997).

The Telco Act contains no provisions requiring a public utilities commission to create detailed performance standards. MCI Communications Corp. v. US West Communications, Inc., No. C97-1508R, Order on Summary Judgment Motions (W.D. Wash. July 21, 1998). Rather, according to the FCC, the Telco Act only requires that public utilities commissions implement the nondiscrimination rules of the Act by "adopting, inter alia, specific rules . . . and any other specific conditions *they deem necessary* to provide new entrants . . . with a meaningful opportunity to compete in local exchange markets." Local Competition Order ¶ 310 (emphasis added). In MCI v. US West, the court found that the Washington state public utilities commission's use of general standards did not violate the Act, and that unless MCI could demonstrate that "the general standards outlined within the agreement were so unenforceable as to undermine the purpose of the Act," no set of specific standards was required. Id. The Court therefore finds that relief on this issue is inappropriate, and DISMISSES Count Eleven of MCI's September 22, 1997 Complaint.

V. US West's Challenge to the Imposition of Liquidated Damages and Penalties Provisions

In Count Eight of its September 29, 1997 Complaint against MCI and AT&T, and in Count Six of its August 4, 1997 Complaint against Sprint, US West contends that its interconnection agreements with the Defendants violate the Telco Act because they include "liquidated damages and penalties provisions." US West argues that the COPUC has only limited authority under the Telco Act, and that these provisions

exceed that authority. Because this issue involves the COPUC's substantive compliance with the Telco Act, I apply the de novo standard of review. US West Communications, Inc. v. Hix, 986 F. Supp. 13,18-19 (D. Colo. 1997); GTE South v. Morrison, 6 F. Supp. 2d 517, 523-24 (E.D. Va. 1998).

This issue is similar to the performance standards issue in that, again, the Court finds that the Telco Act does not specifically delineate the powers of the public utilities commissions with respect to these types of provisions. As previously stated, according to the FCC, the Telco Act gives public utilities commissions the authority to "adopt[], inter alia, specific rules . . . and any other specific conditions *they deem necessary* to provide new entrants . . . with a meaningful opportunity to compete in local exchange markets." Local Competition Order ¶ 310 (emphasis added); see also 47 U.S.C. § 252(b). The liquidated damages and penalties provisions are designed to encourage compliance with the agreements by setting forth clear remedies where a party fails to comply. See Decision No. 96C-1337, Docket No. 96A-366T, Decision Regarding Petition of MCI for Arbitration (J.A. Vol. 10, Tab 103, at R.11513-14). This is certainly within the required scope of the COPUC's authority in that it is designed to provide new entrants with a fair and meaningful opportunity to enter the local exchange market. Further, it is not clear to me that this issue is even ripe for full consideration, as the agreements state only that the parties "remain subject to any applicable liquidated damages provision that *may* be adopted by the Commission." (emphasis added) See USWC-MCI Agreement Part A, §13.4 (J.A. Vol. 13, Tab 128, at R. 26158; USWC - AT & T Agreement Part A, §13.4 (J.A. Vol. 13, Tab 126, at R. 25011). For these reasons, I find that Count Eight of US West's September 29, 1997 Complaint against MCI and

AT&T, and Count Six of its August 4, 1997 Complaint against Sprint should be DISMISSED.

The Court's rulings, as discussed in this Order, require the dismissal of certain claims for relief asserted by US West and MCI. Accordingly it is,

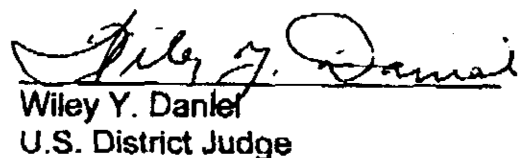
ORDERED that the Eighth, Ninth, Tenth, and Thirteenth Claims for relief set forth in US West's September 29, 1997 Complaint are DISMISSED WITH PREJUDICE. It is

FURTHER ORDERED that Count Eleven of MCI's September 22, 1997 Complaint is DISMISSED WITH PREJUDICE. It is

FURTHER ORDERED that the Sixth Claim for relief set forth in US West's August 4, 1997 Complaint is DISMISSED WITH PREJUDICE.

Dated: July 22, 1999.

BY THE COURT:



Wiley Y. Daniel
U.S. District Judge

Exhibit No. _____ (KN-2)
ICG Telecom Group, Inc.
Docket No. 990691-TP

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 97-D-152

CERTIFICATE OF MAILING

I hereby certify that a copy of the Order was mailed to the following on July 22, 1999.

Craig Joyce
Walters & Joyce
2015 York St.
Denver, CO 80205

Albert H. Kramer
Dickstein, Shapiro, Morin & Oshinsky
2101 L Street, N.W., 8th Floor
Washington, DC 20037

Wendy Moser
William Ojile
Ted D. Smith
US West Law Department
1801 California St. #5100
Denver, CO 80202

Bobbee J. Musgrave
B. Lawrence Theis
Perkins Coie
1675 Broadway #2800
Denver, CO 80202

David DeMuro
Vaughan & DeMuro
1675 Broadway #1400
Denver, CO 80202

Anthony M. Marquez
Assistant Attorney General
D.C. Box No. 20

Tamar E. Haverty
Mark Sievers
Swidler & Berlin
3000 K Street N.W., #300
Washington, DC 20007

Marcy G. Glenn
Robert Pomeroy
Joseph Halpern
Holland & Hart
DC BOX 6

Martha Hirschfield
U.S. Department of Justice
901 E Street, N.W., Room 1039
Washington, D.C. 20530

David P. Murray
A. Renee Callahan
Willkie Farr & Gallagher
1155 21st St., N.W, #600
Washington, D.C. 20036-3384

Charlels B. Hecht
Phillisa Sheomaker
Nichols & Hecht
1624 Market St., #200
Denver, CO 80202

Deborah Waldbaum
Western Regional Counsel TCG
1350 Treat Blvd., #500
Walnut Creek, CA 94596-2153

Steven H. Denman
Richard L. Corbetta
Melissa A. Dalla
Denman & Corbetta, P.C.
600 17th St., #1015
Denver, CO 80202

Thomas F. Dixon
MCI Telecommunications Corp
707 17th St., #3900
Denver, CO 80202

Thomas F. O'Neil, III
William Single IV
Matthew B. Pachman
MCI Telecommunications Corp.
1133 19tn St., N.W.
Washington, D.C. 20036

Paul M. Gordon
Gordon & Goddard
1 Kaiser Plaza, #2360
Oakland, CA 94612

Richard Fanyo
Dufford & Brown, P.C.
1700 Broadway, #1700
Denver, CO 80290-1701

Darryl M. Bradford
Kristina M. Entner
Jenner & Block
1 IBM Plaza
Chicago, IL 60611

Michael D. Warden
Christopher D. Moore
Sidley & Austin
1722 I St., N.W.
Washington, D.C. 20006

Michael G. McGloin
McGloin, Davenport, Severson, & Snow
1600 Stout St., #1600
Denver, CO 80202

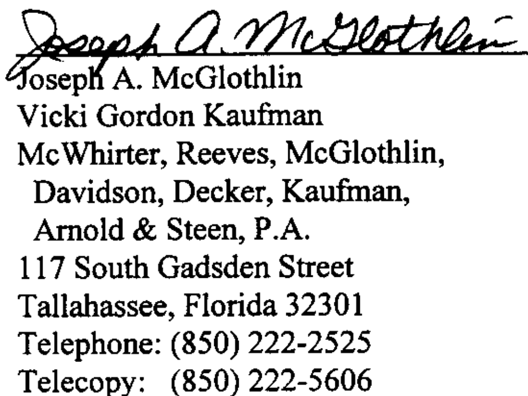
Magistrate Judge Pringle

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the ICG Telecom Group, Inc.'s Testimony and Exhibits of Karen Notsund have been furnished by hand-delivery this 2nd day of August, 1999 to:

Lee Fordham
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Gunter Building, Room 370
Tallahassee, FL 32399

Nancy B. White
Michael P. Goggin
c/o Nancy Sims
BellSouth Telecommunications, Inc.
150 South Monroe Street, Suite 400
Tallahassee, FL 32301



Joseph A. McGlothlin
Vicki Gordon Kaufman
McWhirter, Reeves, McGlothlin,
Davidson, Decker, Kaufman,
Arnold & Steen, P.A.
117 South Gadsden Street
Tallahassee, Florida 32301
Telephone: (850) 222-2525
Telecopy: (850) 222-5606

Attorneys for ICG Telecom Group, Inc.