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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UT 119

In the Matter of the Investigation into Rate)	
Schedules of U S WEST)	
COMMUNICATIONS, INC., UNITED)	ORDER
TELEPHONE OF THE NORTHWEST,)	
PACIFIC TELECOM, INC., AND GTE)	
NORTHWEST INC., under ORS)	
759.184.)	

DISPOSITION: STIPULATIONS APPROVED;
VIRTUAL COLLOCATION REQUIRED

BACKGROUND

Procedural History. On March 8, 1994, the Commission initiated this investigation into collocation rate schedules filed by U S WEST Communications, Inc. (USWC), United Telephone of the Northwest (United), Pacific Telecom, Inc. (PTI), and GTE Northwest Inc. (GTE). Order No. 94-490. The companies filed the rate schedules on February 4, 1994, pursuant to a direction from the Commission that the companies comply with the requirements of the Commission's Open Network Architecture (ONA) rules.¹ OAR 860-35-110 et seq. At its March 8, 1994, public meeting, the Commission allowed the collocation schedules to go into effect subject to refund.

Parties to this case are USWC, United, PTI, GTE, and Commission Staff. MCI Communications Corp. (MCI), Electric Lightwave, Inc. (ELI), AT&T Communications of the Pacific Northwest (AT&T), Oregon Cable Television Association (OCTA), and McCaw Cellular (McCaw) intervened.

The Commission's Open Network Architecture rules require local exchange companies (LECs) to unbundle their local exchange and exchange access services. In OAR 860-35-110, the Commission directed LECs to offer physical and virtual collocation. Physical collocation is a service to be offered by a LEC that provides for placement and installation of

¹ See minutes of the Commission's December 21, 1993, public meeting.

equipment, software, and data bases, owned by the customer, on LEC premises. OAR 860-35-020(8). Virtual collocation is similar, in that the customer makes the selections, yet the selections are owned and maintained by the LEC. OAR 860-35-020(27).

In Order No. 94-490, the Commission directed the parties to initiate settlement negotiations. Those discussions resulted in the stipulated agreements discussed below.

In Order No. 94-1091, the Commission narrowed the scope of this docket. The Commission determined that pricing and unbundling of interconnection rate elements would be addressed in docket number UM 351, not in this docket.

Hearings and briefs. On May 8, 9, and 10, 1995, a hearing was held in this matter before an Administrative Law Judge for the Commission. After the hearing, the parties filed briefs. As part of its June 30, 1995, brief, Staff filed a rate schedule that it recommended the Commission substitute for the schedules filed by USWC with the understanding that some revisions to the schedule may be made in UM 351.

On August 24, 1995, the briefing schedule was interrupted by the Oregon Supreme Court's decision in *GTE Northwest, Inc. v. PUC and MCI Telecommunications Corporation*, 321 Or 458, 900 P2d 495 (1995). In that case, the Court found that the Commission's administrative rules requiring physical collocation constituted a taking.² The Court set aside the Commission's rules as they pertained to physical collocation. The decision rendered moot the issues in this docket related to physical collocation. The Commission has filed a petition for writ of certiorari with the United States Supreme Court asking for review of *GTE*.

Thereafter, on October 6, 1995, USWC revised its tariff proposal removing references to physical collocation and making other modifications as recommended by the parties. The tariff introduced expanded interconnection offered through virtual collocation arrangements. The tariff adopted the terms of USWC's currently effective interstate virtual collocation tariff for intrastate operations. On October 13, 1995, USWC filed a brief commenting on its virtual collocation tariff. The other parties to the docket and Staff filed answering briefs in mid-November. USWC filed its reply brief on December 6, 1995.

Federal telecommunications legislation. On February 8, 1996, the

²The Court determined that, under federal law, physical collocation was a physical invasion of the property of the LECs. The Court reasoned that the Commission could not order such a taking without statutory authority to do so.

President signed new legislation for the regulation of telecommunications utilities. The law includes provisions ordering LECs to offer physical collocation services. The law requires that the Federal Communications Commission (FCC) adopt rules to implement the new legislation. As a result, the actions that we take in this order may have to be modified after the FCC rules are adopted. In the interim, however, LECs must, at a minimum, put virtual collocation into place. The terms and conditions of these services can be modified or supplemented at a later date.

Stipulations. Staff, AT&T, ELI, and OCTA entered into stipulations with GTE, PTI, and United regarding the terms of their collocation tariffs. The telecommunications utilities submitted proposed tariffs to accompany the stipulations. The companies voluntarily included rates for unbundled interconnection rate elements. No party opposed the stipulations. The stipulations are attached to this order as appendices. The Commission has considered the stipulations and finds them reasonable.

At this time, the companies have not refiled their tariffs removing the portions relating to physical collocation. GTE recommended that the Commission adopt the stipulations, as written, with the understanding that those portions addressing physical collocation would be disregarded. The Commission will adopt the stipulations, with that one understanding.

On a voluntary basis, the companies may implement the physical collocation portions of the tariffs agreed to in the stipulations. In the event the companies do not intend to implement the physical collocation provisions, they shall refile the tariffs with the portions relating to physical collocation removed. The refiled virtual collocation tariffs will be subject to compliance review and approval.

OPINION

Purpose and Scope of the ONA Rules

As a result of the decision in *GTE*, this order is limited to the rates, terms, and conditions for virtual collocation services in Oregon. Our rules define virtual collocation as:

A service, offered by a LEC, which provides for placement and installation of customer selected equipment, software, and databases on LEC premises. Premises include central offices, remote network facilities, or any other similar location owned by the LEC. The equipment, software, and databases are owned and maintained by the LEC.
OAR 860-35-020(27).

The purpose of virtual collocation is to enable all providers of telecommunication services to expand their offerings. Potential users of virtual collocation tariffs implemented under these rules include alternative exchange carriers (AECs), interexchange carriers (IXCs), enhanced service providers (ESPs), and other entities.³

By requiring LECs to open their networks to new competitors, we intend to stimulate use of the local exchange network, foster the development of innovative applications, and encourage public use of new services. These goals can only be accomplished if we create a regulatory environment that ensures nondiscriminatory access to the local exchange network for all providers on equal rates, terms, and conditions. The most effective way to accomplish that goal is to prescribe conditions under which LECs and other providers can furnish services without undue competitive advantage.

USWC's Tariff Filing

On October 6, 1995, USWC filed a revised intrastate tariff in this docket. The revised tariff reflects the terms of the company's currently effective interstate tariff. The revised tariff eliminates physical collocation from USWC's service offering and adds rates for expanded interconnection (EI) service.

³A customer is a subscriber, user, or consumer of LEC services or an applicant for LEC services. OAR 860-35-020(11).

Interconnection. EI service is the connection between the collocator's facilities and USWC's switched and special access facilities in the same wire center. The service is offered on a bundled basis. USWC's filing included EI rates for dedicated and switched services. USWC did not include DS0 and SONET channel termination capabilities. This omission may limit the ability of AECs to use virtual collocation for local services. *See* Order No. 95-021. To assure that all collocators can use USWC's virtual collocation services, USWC must also provide, at a minimum, DS0 and SONET channel terminations, in addition to the other capabilities included in the tariff.⁴

ELI argued that the Commission should unbundle the EI service and price it at total service long run incremental cost (TSLRIC). Order No. 94-1091 directed that the issue of unbundled interconnection rates should be addressed in UM 351. That docket deals with the significant technical and policy decisions relating to unbundling interconnection functionalities, as well as the other services provided by the LECs.

We have reservations about the pricing and structure of USWC's EI tariff. Unbundling of the elements and permanent pricing is a part of UM 351. The order in UM 351 will be issued this Spring. In the interim, the bundled EI service required here is a suitable starting point to make virtual collocation available now.

Virtual collocation. The Commission will not adopt the collocation portions of the revised USWC tariff. There is little to recommend the USWC filing. The USWC tariff filed in Oregon mirrors the virtual collocation tariff filed with the FCC. In FCC order DA 94-1421, the FCC concluded that USWC's rates are likely to be unreasonably high and some provisions of the tariff too vague. As Staff pointed out in its direct testimony, there are many provisions of the USWC tariff related to collocation that are unduly restrictive and may be a barrier to entry.

For the reasons set forth below, we conclude the USWC tariff does not adequately further the Commission's policy of promoting competition for telecommunications services at the intrastate level. At a minimum, the collocation tariffs should encompass the needs of access customers that have dedicated service needs, switched access providers, enhanced service providers, and the local exchange needs of AECs. The tariff provisions must ensure that

⁴ DS0 (e.g. basic local service) and SONET (e.g. OC-3, OC-12, and OC-48) services are basic network access channel connections with standard signaling and transmission level capabilities. These connections are suitable for a wide variety of network services. Within 60 days of the effective date of this order, USWC shall file cost studies and rates, including a markup consistent with the terms of this order, for Sonet services.

all providers have non-discriminatory access to USWC's facilities on equal rate, terms, and conditions. That includes allowing collocators the same interfaces as those which the company uses to enable communications between switches and external processors providing enhanced services. OAR 860-35-110(6)(h).

USWC Motion to Strike Portions of the Staff Brief

The appendix to Staff's initial brief was a proposed collocation tariff. On July 28, 1995, USWC filed a motion to strike portions of Staff's opening brief. GTE filed a reply on August 7, 1995, supporting USWC on the due process issues raised. On August 16, 1995, Staff filed its response to the motion to strike.

In its answering brief, filed November 17, 1995, Staff replaced its recommendation with a proposed virtual collocation tariff. USWC renewed its objections to Staff's proposed tariff in its reply brief, dated December 6, 1995. Since Staff replaced its first tariff proposal, we address only the objections to Staff's proposed virtual collocation tariff.

USWC bases its objection to the Staff proposal on two grounds. First, it claims that the draft proposal is evidence and USWC should have had an opportunity to test the provisions of the tariff through cross-examination. Second, USWC claims that Staff's proposed virtual collocation tariff departs from the evidence that Staff introduced in the docket.

USWC misunderstands the Staff filing. The Staff proposed tariff is a recommendation on how the Commission should implement its decisions in this docket. The Staff tariff is no different from a proposed order attached to a brief. As with a proposed order, however, any provisions in a proposed tariff must be supported in the record. The motion to strike the Staff tariff is denied.

We conclude that the Staff proposal to direct USWC to adopt a particular tariff incorporating the Commission's choices is sound. We are concerned about the time USWC might require to incorporate our decisions into a tariff. In Appendix A, therefore, we prescribe a tariff for USWC. The rates specified in our tariff are based on the cost and rate principles adopted below. Each of the rates has a basis in the record. Similarly, the terms and conditions in our tariff are based on the evidence submitted by the parties. USWC had ample opportunity to respond to the evidence and cross-examine witnesses who sponsored the testimony.⁵

⁵ If it wishes, USWC may adapt the provisions of the prescribed tariff to its own format so that it fits internally with other provisions prescribed by it. However, the rates, terms, and conditions of this virtual collocation offering should be part of the USWC tariff for access services. This service is not subject to price listing, as USWC has proposed.

ORDER NO.

Collocation Costs and Rates

Cost of service. A principal area of disagreement in this docket is over the rates to be charged for collocation services. This issue is far more significant for physical collocation than it is for virtual collocation. However, even with virtual collocation, there are services that USWC will provide for the collocators. The Commission must set the rates for those services.⁶

The point of departure for setting the rates is the cost of providing the services. The Commission prefers rates based on the long run incremental cost of providing the service. In Phase I of docket UM 351, the Commission identified categories and subcategories of telecommunications functionalities, and specific cost estimates.

⁶ In this order, we only require that USWC offer virtual collocation. Nonetheless, our policy decisions on cost of service and rates also apply to physical collocation.

The USWC cost analysis was not based entirely on these principles. USWC pointed out that collocation services were not included in the UM 351, Phase I, cost estimates. It claims that collocation costs actually relate to real estate construction, not network functionalities, such as switching and transport. As a result, USWC ignored UM 351 cost principles, including those relating to depreciation and least cost. With respect to depreciation, the principle states that cost studies should consider a time period long enough that all inputs are avoidable. With respect to least cost, the principle requires that costs for network functionalities should be developed at the building block level.⁷

USWC argued that the construction and equipment costs associated with collocation should be recovered up front from the collocator. USWC chose to hire an architect and engineering firm to estimate the average cost of constructing facilities in its entire region, rather than obtain Oregon specific estimates of costs from several contractors.

As a result, the USWC tariff rates for collocation were based on estimated construction costs, cable placements, conduit, and risers. It used market rates for space rental costs. USWC argued that the costs for collocation should be based on how USWC would actually construct the collocation facilities, given existing central office conditions. None of the cost estimates for these items conformed to UM 351 cost principles.

Furthermore, USWC wants to recover the costs of construction, as a non-recurring cost, before the customer takes service. The company is concerned that Staff's proposal to recover these up front costs through recurring tariff charges exposes the company to the risk from a collocator abandoning service before construction costs are recovered. To cushion the rate shock, USWC proposes to spread the construction costs over 12 months.

⁷Network functionalities are elements that are used to provide telecommunications services. USWC's claim that collocation costs are actually real estate costs, and not network functionalities, is inconsistent with the statutory definition of service. ORS 756.010(8) states:

Service is used in its broadest and most inclusive sense and includes equipment and facilities related to providing the service or the product served.

Staff identified a number of problems with USWC's presentation, in addition to the inconsistency with Commission-adopted UM 351 cost principles. In Staff's view, the USWC cost study assumptions included loadings that are excessive and perhaps unnecessary. For example, nonrecurring charges proposed by USWC for 48 Volt DC Power Cable Installation appeared to be several thousand dollars over Staff's calculations. USWC's rates for ampere usage per month and monthly power cable installation fees greatly exceed Staff's calculations. Finally, the evidence in the record also indicates that the USWC cost determinations could not be verified. To address the problems and utilizing USWC's own cost data, Staff revised the USWC cost analysis and the factors USWC used to develop its proposal. In addition, with the same data, Staff used cost data supplied by USWC to develop rates for elements not included in the USWC filed tariff.

The Commission supports the Staff view and finds no reason to depart from the costing principles established in UM 351, Phase I. Collocation is a network functionality. USWC must use the same principles for estimating the cost of providing facilities for collocation as it uses to estimate the cost of serving other entities that purchase access to the network, such as basic service customers, cocarriers, and interexchange carriers (IXCs). Power, cables, conduit, risers, heating and air conditioning systems, and bricks and mortar, generally, are necessary components of any type of interconnection, switching, or transport facilities that USWC may construct.

USWC's concerns about recovering the real estate costs associated with placing virtually collocated equipment in the central office are unfounded. The costs of the central office, including space that is currently vacant, are already included in the USWC rate base. As long as rates for collocation cover the incremental cost of providing the service, USWC should be indifferent to the use of the space for collocation. USWC also raised concerns regarding the possibility of loss should a collocater discontinue service before all the capital costs are recovered. As USWC is aware, capital costs associated with meeting customer requirements are included in the rate base. The company is not foreclosed from including such costs in its rate base and amortizing the costs as a ratemaking expense. This treatment is no different than the treatment of other capital costs, such as line extensions, that are incurred by USWC to meet a customer's needs.⁸ For the purpose of costing services, then, collocaters should be treated no differently than others that require access to the network. Collocation elements that are defined in the ONA rules are costs of telecommunication services. The UM 351 cost principles must be used for these collocation elements without exception.

⁸ USWC may address the issue of stranded investment under a price regulation plan in docket UT 124.

Because of USWC's failure to follow UM 351 cost principles, the Commission adopts Staff's cost analysis and Staff's identification of additional collocation elements that were not included in the USWC tariff. USWC should prepare cost studies for collocation and interconnection services in accordance with the UM 351 cost principles. In the interim, rates for virtual collocation will be based on USWC's costs at the lives prescribed in the UM 351 cost study.

Rates. Rates for collocation should encourage the use of collocation to promote effective competition in the intrastate telecommunications marketplace. Consequently, rates should be set close to cost, with a relatively low level of contribution to joint and common costs. Costs that are primarily non-recurring should be recovered on a non-recurring basis. Costs that are primarily recurring should be recovered on a monthly basis. The Commission agrees with Staff that collocation is an access service and not a real estate transaction. Consequently, the cost to USWC of providing this type of access becomes part of its overall cost of service. To encourage competition, the portion of those costs to be recovered through interconnection and collocation charges should be set relatively close to the incremental cost of providing the service.

When deciding which mark-up proposal to adopt, one of the factors that we consider is the goal of encouraging the growth of competition in Oregon. We agree with Staff, AT&T, ELI, and OCTA that the rates proposed by USWC will not encourage the use of collocation. Unnecessarily high rates will impose a burden on collocators and end users and will impair the development of a competitive market. The record indicates that there was little, if any, demand for virtual collocation at USWC's current interstate rates. At the time of the hearing, there were physical collocators in only two USWC central offices in Oregon and one was affiliated with USWC. There were no ESPs or other customers for virtual collocation in Oregon. Furthermore, USWC's proposed rates for Oregon mirror the interstate collocation rates. There is no demand on the interstate level for those services. Consequently, we have little expectation that the collocators would purchase intrastate services at USWC's proposed rates. In fact, Staff reported that one of USWC's contract customers would face a substantial rate increase if forced to buy the services at the proposed rate.

MCI noted that USWC requires collocators to pay 50 percent of the nonrecurring charges associated with virtual collocation service, less the quote preparation fee, prior to installation and the remaining 50 percent on the date set for interconnection. MCI claims this shifts costs to the collocator. We believe that collocators should pay non-recurring charges associated with installation prior to the time work begins. Since these tariffed charges include only labor and materials, the outlay by the collocator should not be a barrier to entry.

USWC proposes to prepare the quotation on an individual customer basis (ICB). The collocator would specify its requirements and USWC would provide an estimate. The company would determine which rate elements the collocator must purchase for USWC to provide the virtual collocation service. USWC's testimony indicated that the quotation process would be conducted in consultation with the collocator. This procedure is reasonable, so long as the items are in the tariff. We also adopt the Staff proposal to eliminate USWC's proposed quotation preparation fee. These costs should not be substantial and should be absorbed in the allowed mark-up.

Staff has calculated the particular rates for each type of collocation service. USWC did not challenge the calculation of the Staff rates, but expressed a preference for its own rate determinations. The Commission concludes that rates should reflect the cost principles established in UM 351, Phase I and are, therefore, more likely to promote the development of competition in the telecommunications industry. Staff's testimony concluded that the range for a reasonable mark-up is 10 to 30 percent. AT&T's opening testimony referred to a maximum acceptable mark-up of 25 percent. In their briefs, AT&T and ELI expressed a preference for rates based on TSLRIC with no markup. OCTA and MCI argued for rates based on TSLRIC.

We believe Staff's proposed range is reasonable. The rates specified in our tariff in Appendix A include a markup within that range. We do not subscribe to the intervenors' proposal. In the case of collocation services, rates should contribute to common costs, overhead, and other relevant costs of the firm.

Our tariff in Appendix A includes recurring and non-recurring rates for virtual collocation services based on the TSLRIC of providing those services. The recurring rates include a reasonable mark-up over TSLRIC. Non-recurring rates are set equal to USWC's estimated costs of time and materials. The labor rates are based on USWC's proposed virtual collocation tariff.

Collocators Interconnecting With One Another

Staff and the intervenors object to the provision in the USWC tariff prohibiting collocators from directly interconnecting with one another in the central office. Staff recommended that USWC be required to allow direct interconnection between collocator facilities, as long as the interconnection uses USWC's facilities. ELI would prefer direct interconnection, but recommended interconnection using USWC facilities, if direct interconnection is not available.

USWC objects to such a provision. It claims that it should not have to allow collocators to by-pass the network within the USWC central office. USWC suggests that collocators can interconnect in buildings outside the central office or by other means. In addition, USWC claims that the provision of jumper wires and cross connect facilities necessary for interconnection between collocators would be unbundled services. Unbundling is to be addressed in the UM 351, Phase II order.

The prohibition against direct interconnection creates a highly inefficient path for traffic between the facilities of two collocators. Requiring collocators to incur additional costs to interconnect outside the central office is an unnecessary burden to entry. We will require USWC to allow interconnection between collocators at the central office, as long as they use facilities provided by USWC. USWC is required to provide such interconnection with bundled EI services and any elements unbundled in the final order in UM 351, Phase II.

Imputation

Staff argued that LEC provision of enhanced services to end-users should be subject to the imputation test set forth in OAR 860-35-080. The rule requires that a LEC offering ONA services on either a deregulated or regulated basis must charge or impute to its own enhanced services operation the same tariffed or price listed rates for ONA services that the LEC offers to its customers.

We described the importance of imputation in Order No. 94-1851, at 3:

Imputation is a regulatory device which imposes a price floor on LEC services supplied to other providers of telecommunications services. It requires a LEC to charge itself the same price that others must pay to purchase essential functions for the LEC. Imputation thus prevents a LEC from creating a competitive advantage for itself by manipulating the price of LEC-supplied components where no adequate alternatives exist in the marketplace.

USWC asserts that collocation in USWC buildings is not an essential⁹ or

⁹ Under ORS 759.050(1)(c), essential function means a functional component of a service necessary to the provision of the service by a telecommunications provider for which there is no adequate alternative in terms of quality, quantity, or price to the incumbent telecommunications utility.

bottleneck¹⁰ facility, and should not be subject to imputation. We disagree. Collocation elements should be treated as essential functions, until USWC demonstrates otherwise. The company claims that collocation is not an essential function because entrants have comparable alternatives in the marketplace. They can rent space from another company or use their own building. In addition, USWC points out that location in the same building is not necessary for interconnection. Providers can efficiently interconnect at significant distances from each other. USWC asserts that designating collocation as a bottleneck facility places the company at a competitive disadvantage. It should not be required to be the least cost provider of real estate for facilities used by ESPs, AECs, or IXC. Each of these types of providers has its unique cost advantage. USWC claims that it should not be required to forego an area where it does have a cost advantage to promote competitive entry.

AT&T and ELI raise various claims regarding the necessity for collocation and the cost of duplicating USWC's facilities. Staff recommends that the Commission designate all elements of collocation as essential functions, until USWC demonstrates that the particular service is not essential.

Staff's recommendation is consistent with our prior decisions:

The Commission cannot determine *a priori* that building blocks offered by a utility are available from competitive providers or competitive offerings are comparable in quantity, quality, or price.

To insure that competitors are not disadvantaged by the exercise of LEC market power, it is reasonable to treat all building blocks as essential functions until the incumbent telecommunications utility demonstrates otherwise.

Order No. 95-313 at 2-5.

Until USWC shows that collocation elements are available from other providers at comparable price, quantity, and quality, the elements should be designated as essential functions. Competitors should not be required to prove that collocation and interconnection facilities are a bottleneck before the Commission designates the functions as essential. Such an obligation would enmesh the new entrants and the Commission in unending regulatory proceedings, at a time when USWC holds virtually 100 percent of the local service telecommunications market in its exchange territory. It is entirely appropriate that we adopt a

¹⁰ An bottleneck facility is an essential element. See Order No. 95-313, at 4.

regulatory policy congenial to competition while USWC retains market dominance over most, if not all of its services. Order No. 91-1598 at 34. When determining the rate floor for USWC's services, the ONA rule and Order No. 94-185 policies on imputation should apply.

Our decision on imputation also applies to EI for collocators interconnecting with one another using USWC's facilities. USWC claims that this requirement places it at a competitive disadvantage because it must impute tariff links to its own network. In our view, this requirement ensures that LECs and collocators will have similar underlying cost structures. This promotes competition and avoids undue competitive disadvantages.

Limitations on the Type of Equipment

The USWC tariff limits the type of equipment for collocation to transmission terminating equipment. This is the only type of equipment authorized in USWC's FCC tariff. According to USWC, if collocators can use other types of equipment on an intrastate basis, they run the risk of violating federal law. Collocators serving customers in two jurisdictions could violate federal law by handling interstate traffic on equipment that is not authorized in the interstate tariff. To address that concern, USWC insists that the Commission adopt FCC interstate rates, terms and conditions for virtual collocation. USWC refuses to transmit mixed jurisdictional traffic over facilities that are virtually collocated only because of this Commission's exertion of intrastate authority. USWC insists that there be an ironclad means of insuring that only intrastate traffic is transported over virtual collocation equipment.

USWC's position is without merit. The Commission is unaware of any legal or technical prohibition on LECs handling both intra- and interstate traffic on the same facilities. In fact, LECs carry mixed traffic on their facilities all the time. IXC traffic is, in part, mixed.¹¹ USWC now has a collocated ESP customer that handles mixed traffic.

This issue arises because USWC refuses to submit to the FCC a tariff for equipment, other than terminating equipment, on an interstate basis. The Commission does not have authority to require USWC to file such a tariff, but the Commission does not have to condone USWC's desire to impede the development of a competitive market for telecommunications services in Oregon. USWC's tariffs should accommodate the provision of equipment, other than terminating equipment, even if that equipment is limited to intrastate traffic.

¹¹As OCTA points out, LECs use the percentage of interstate usage (PIU) methodology to bill for toll traffic transported on their systems.

The record indicates some customers, such as banks, would be willing to segregate traffic. Other customers could assure USWC that they are programming their PBXs to handle only Oregon intrastate calls. As long as the collocators are paying for the equipment, USWC should be required to offer services that enable collocators to meet the needs of their customers.

USWC offers another reason to limit its offerings to transmission terminating equipment. It claims there is no demand for other types of equipment. Staff, OCTA, AT&T, and ELI point to USWC's high rates to explain the lack of demand. We conclude that USWC's proposed service offerings are so limited that it is impossible to determine if there will be a demand for the service. The company gave no technical reasons why it is refusing to virtually collocate equipment other than terminating equipment on the federal level.¹² As a result, we will not accept lack of demand as a rationale for limiting the type of equipment that can be virtually collocated in a central office.

Lease Back of Equipment

The record includes several options for collocators to provide virtual collocation equipment to USWC. USWC's tariff provides for a no cost lease. Under this method, the collocator obtains the equipment and transfers possession to USWC via a no cost lease. USWC holds exclusive possessory rights to the equipment. Title to the equipment does not pass to USWC. USWC offers such a term in its interstate tariff.

MCI wants the option of a one dollar lease back that actually provides for temporary title transfer of the equipment to USWC. MCI indicated that most other LECs provide this option. Staff and AT&T supported the sale-lease back method, where the collocator purchases the equipment from the vendor and then sells it to USWC for one dollar. USWC then leases the equipment back to the collocator. USWC has title to the equipment. A final method is the LEC purchase option. Under this method, the LEC purchases the equipment and leases it to the collocator.

MCI suggested that the Commission adopt a method of acquiring the equipment that avoids taking issues such as those addressed in *GTE, supra*. Apparently, the theory is that, if USWC can be designated owner of the property, it cannot claim that virtual collocation is physical invasion of USWC's property.

¹²Our tariff requires virtual collocators to designate equipment that is compatible with USWC's equipment and operating systems.

We adopt the USWC proposal with a slight modification.¹³ USWC offers a zero cost lease in its interstate tariff and has volunteered to offer it in Oregon. We require a charge of one dollar for the lease. In our view, title transfer is unnecessary. The substance of the arrangement is the same. Under this method, USWC has possession and control of the equipment. As discussed below, USWC also approves the personnel who can install, repair, maintain, and remove the equipment. USWC is required to provide a service with equipment supplied by the collocator.

AT&T points to several provisions that appear inconsistent with USWC's declaration that it will not own the equipment. For example, USWC's tariffs provide that the warranties for the equipment and access to technical support pass through the collocator to USWC. These are typically provided to the owner of the property. AT&T indicated that the warranties may include provisions requiring the manufacturer or seller to perform maintenance. AT&T also indicated that the tariff reserves to USWC the rights of a buyer under the Uniform Commercial Code. Our tariff in Appendix A clarifies that USWC will assume, through the lease, the responsibility for installation, maintenance, repair, and removal of the equipment. USWC will be expected to act in a reasonable manner to ensure compliance with warranty terms or any other obligation that it assumes on behalf of the collocator.

Insurance

As required by OAR 860-35-110(3)(c), the USWC virtual collocation tariff includes a requirement that collocators obtain comprehensive general liability insurance, including protection against death, personal injury, and property damage. The USWC tariff requires one million dollars of coverage, the minimum specified in the rule. The rule requires that a company qualified to do business in Oregon issue the insurance. USWC is willing to allow a collocator to self-insure, if the Commission amends the rule.

MCI claims the one million dollar requirement is excessive, unnecessary, and a barrier to entry. It argues that there is no evidence in the record to support the one million dollar requirement, that USWC is in the position to assure safety and interoperability, that the equipment must meet industry standards, and that USWC contractors will install, maintain, and remove equipment.

¹³ OAR 860-35-020(27) provides that, for virtual collocation, customer selected equipment is owned by the LEC. To allow the use of the \ lease to USWC, we direct Staff to propose an amendment to our administrative rules to modify the requirement regarding ownership of the equipment.

AT&T, OCTA, and ELI ask that a self-insurance provision be included in the tariff. Staff supports the one million dollars of coverage because USWC could be joined as a defendant in a suit against a collocator. Staff also believes collocators should be able to self-insure.

The Commission adopts USWC's position on general liability. The proposal is consistent with the rule and should be adopted. However, it is apparent that the rule imposes a burden that none of the parties believe is necessary. Consequently, we direct Staff to propose an amendment to OAR 860-35-110(3) to allow self-insurance.

Liability

USWC's proposed tariff includes a provision that limits its liability to willful misconduct for personal or bodily injury. There is no liability for personal property or fixtures or for interruption of service or interference with the collocator's facilities. USWC's brief states that similar limitations on liability apply to customers other than collocators.

OCTA and Staff assert that liability obligations between USWC and collocators should be the same. They point to OAR 860-35-110(4)(c) which states, "A LEC shall be required to indemnify the collocated customer against death, personal injury and property damage caused by the LEC's intentional misuse or negligence." USWC responds that collocators should be treated the same as other customers. USWC's tariff for non-collocators limits liability to willful misconduct.

Staff points out that the limitation on liability of a public utility contained in the utility's tariff is one that is permitted by the regulatory agency. Limitations of liability for less than gross negligence have been upheld by the Oregon court. *Garrison v. PNB*, 45 Or App 523 (1980). That kind of limitation, however, is not applicable in every situation, and, as a matter of policy, is open to question. (Compare *Olson v. PNB*, 65 Or App 422 (1983).)

The issue here is whether a limitation on liability is appropriate with respect to entities purchasing service under the USWC interconnection and collocation tariffs. We conclude that such a limitation should not be authorized for death, damage, and injury. First, the rule provides that LECs shall indemnify collocators for death, damage, or injury caused by the LEC's *negligence*. The language of the rule is clear. Second, under these rules, collocators can expend large sums of money for equipment entrusted to the care of USWC. There is a greater likelihood that USWC will be diligent in its care of the equipment if it is liable for ordinary negligence. Finally, USWC should be responsible to the collocators for its ordinary negligence, just as collocators are liable to it for their negligence. USWC occupies a different

relationship with these collocators from its relationship with other customers. While there is no fiduciary relationship in the strictest sense, collocated equipment of the customers is under USWC's exclusive possession and on site control. Therefore, USWC's liability toward these customers for personal injury and property damage arising from services provided under this tariff should not be limited to willful misconduct, but USWC should be liable for its ordinary negligence as well.

In spite of USWC's request for absolute protection from liability, we will require willful misconduct as the threshold of liability for USWC with respect to revenue losses arising from interruptions in services provided under this tariff. USWC, as a competitor, has an incentive to delay actions and otherwise interfere with the quality of service of the collocators. We are reluctant to allow any limitation of liability, but willful misconduct is the standard for loss of revenues for services offered under other tariffs. If necessary, the issue can be revisited at a later date.

USWC's claim that the rule on liability for death, personal injury, and property damage requires it to give an undue preference or advantage to collocators over other customers is without merit. USWC asserts that the Commission may not order any terms for collocators that are superior to the terms offered to other classes of customers. It points to ORS 759.275, which prohibits telecommunications utilities from giving any customer an undue preference or advantage.

The key word in the statute is undue. Commission ordered distinctions in service requirements for classes of customers are not undue, so long as the distinction falls within the scope of the duties and responsibilities granted the Commission by statute. ORS 759.015 requires the Commission to encourage innovation within the industry by a balanced program of regulation and competition. Requiring parity between USWC and collocators with respect to liability will help promote competition in the telecommunications industry in Oregon.

Designation of Contractors for Installation, Repair, Maintenance, and Removal Of Collocator Equipment

Generally, the parties agree that installation, maintenance, removal, and repair of the collocation equipment should be performed by USWC or USWC authorized contractors. AT&T proposes that all parties develop an acceptable list of third party providers who are authorized to maintain and service manufacturer warranties. ELI believes the collocator should be able to select USWC or the particular USWC authorized contractor for installation, maintenance and repair of the equipment. OCTA believes collocators should be able to choose

certified contractors to install, maintain, and repair their own collocation equipment. AT&T recommends that the list include equipment manufacturers. USWC asserted that Commission action forcing it to allow third persons to occupy its premises may cause USWC to challenge the Commission's virtual collocation rules.

AT&T is concerned about the level of service that USWC will provide to collocators for repair and maintenance of equipment. AT&T recommends that USWC's tariff include standards for response time in case of outages. AT&T also noted that USWC will not maintain spare equipment. AT&T fears these omissions will delay the response time. USWC responds that there is no demonstration that the requested provisions are necessary. It also claims Oregon law prohibits USWC from giving collocators special treatment. In its brief, USWC committed to providing response times consistent with reports of trouble for comparable services.

We agree with USWC and Staff that USWC is entitled to designate the persons responsible for installation, repair, maintenance, and removal of equipment. We see no reason why USWC should be required to maintain spare equipment for the benefit of the collocator. However, USWC's assertion of its right to designate personnel carries with it the obligation to minimize cost and complete work in a timely, prudent, reasonable manner. Accordingly, if USWC's labor contracts permit the use of third party contractors, we require USWC to develop a list of approved contractors. USWC must allow the collocator to select the contractor from the list. To provide additional flexibility, our tariff also provides that USWC and the collocator may mutually agree to a contractor that is not on USWC's list.

We agree with USWC that it should provide virtual collocators a response time consistent with trouble conditions for comparable services. In our view, that means the same response time that USWC provides for its own interconnections with other LECs. The appropriate response time standard is immediately.

Training

ELI and AT&T asserted that collocators should be able to train USWC personnel in maintaining and repairing collocated equipment. ELI and AT&T would assure that the training and personnel are accredited or certified. USWC offered a reasonable alternative. USWC will train three persons in each metropolitan area. Training charges will be based on the number of hours the employees are in training and the direct expenses incurred by USWC. USWC is also willing to allow the option proposed by ELI and AT&T. We conclude that the tariff should include both options.

To minimize costs, ELI asks that USWC be required to inform the collocator whether training charges will be incurred for installing collocation equipment. It asks that USWC provide a list of standard equipment that does not require USWC to incur training costs. USWC should make the information available.

Fiber in Entrance Facilities

USWC's tariff requires that collocators use fiber optic cabling for communications entering the central office. This provision would eliminate copper and coaxial cable as a means of carrying communications to and from the collocators facilities in the central office. USWC says this provision is necessary because of space limitations in entrance facilities. OCTA observed that there is no evidence on the record regarding the exhaustion of capacity at entrance facilities or the inefficiency of non-fiber options. Staff pointed out that fiber is considerably more expensive than copper or coaxial cable.

Our tariff will not include this limitation. First, there is no evidence in the record to support USWC's proposed limitation to fiber optic cabling in its entrance facilities. In addition, the Commission's rules adequately address this issue. OAR 860-35-110(6)(c) and (7). The rules provide that the Commission's Staff will inspect the proposed point of virtual collocation to determine if there is a lack of space. If there is, the LEC may deny virtual collocation and offer reasonable alternatives as set forth in the rule. The Commission's dispute resolution procedures are available to resolve the dispute, if necessary.

Miscellaneous Tariff Provisions

Ordering service. AT&T raised a number of concerns regarding the operating provisions of the tariff. AT&T points out that ordering EI requires exchange of paper through the mail. It recommends the process should be automated to cut down the amount of time necessary for the collocator to work out terms and conditions with its customers. AT&T claims the unnecessary time is a barrier to entry and undermines AT&T's position with a customer--a customer for whose business USWC may be competing. USWC responds that automated ordering interfaces may disadvantage small customers. But it will provide such interfaces if volume of demand for intrastate virtual collocation warrants the expense.

The Commission will not require automated ordering interfaces. However, USWC's tariff should not prohibit the exchange of paper by fax, personal delivery, expedited delivery, or other reasonable means of delivery.

Availability of virtual collocation. AT&T argues that offices where virtual

collocation is available should be listed in the Oregon tariff. USWC responds that the Oregon tariff refers to the National Exchange Carriers Association (NECA) tariff so state and federal virtual collocation availability will be consistent. We conclude that USWC should list in its intrastate tariff the central offices in Oregon that can accommodate virtual collocation. This information should be easily accessible to collocators.

AT&T and ELI also object to the tariff provision that makes USWC solely responsible for determining whether virtual collocation arrangements are available from its wire centers. We conclude that the dispute resolution provisions in our rules adequately address this issue. OAR 860-35-130. That rule provides a dispute resolution procedure before the Commission if a collocator objects to a LEC denial of a request for ONA services. While USWC may make the initial determination regarding the availability of collocation arrangements, the Commission will make the final decision.

Payment due date. AT&T also objects to the tariff provision regarding payment upon installation of the equipment. AT&T asserts USWC is not meeting due dates and installation may not mean the equipment has been tested and placed in service. AT&T requests that payment not be due until the equipment has been placed in service. MCI adds that for other services, USWC is paid on service delivery or after service was used for the first tariff period. USWC responds that testing includes USWC and collocator testing. It points out that collocators may delay their own testing for reasons unrelated to whether the equipment has been installed properly, including a lack of customers.

We find that the USWC tariff provision is reasonable. The tariff provides that, at the time of initial installation, USWC will cooperatively perform acceptance testing on the EI equipment. The testing will be conducted in accordance with the manufacturer's recommendations. We conclude that once these testing procedures have been met, USWC should be able to begin charging for the collocation services. Furthermore, under our tariff in Appendix A, nonrecurring charges are reasonable and should not be a barrier to entry.

Discontinuation of service. AT&T asks the Commission to require USWC to change the provision that provides that any changes or modifications will result in cancellation of the EI order and will forfeit all or a portion of the non-recurring charges. AT&T asserts that such a term is not commercially reasonable and is not consistent with the interstate tariff. USWC did not respond to this criticism. We will adopt a modified version of USWC's interstate tariff provisions on discontinuation of service. Changes or modifications to a finalized order will result in cancellation of the order. The virtual collocator will receive a refund for paid nonrecurring charges, less any direct costs already incurred by the company. The collocator may ask that the refund be applied to a new order. The company will bill the collocator the

amount by which the charges for tariffed items provided to the collocator exceed the paid nonrecurring charges.

AT&T asks the Commission to modify the tariff provisions regarding removal and return of equipment. The tariff provides that USWC will provide a quote for the cost of removal. AT&T asks that this service be tariffed based on costs. AT&T also points out that the tariff only permits the collocator seven days to pick up the equipment, after which USWC will dispose of the equipment and keep the proceeds. AT&T asks that collocators be given a commercially reasonable time to remove the equipment, after which USWC should return the equipment COD. AT&T claims the tariff requires the collocator to indemnify USWC against claims arising from the disposal of the collocator's equipment. This requirement derives from the tariff provision that allows USWC to dispose of the equipment.

The Commission agrees that removal of equipment should be based on tariffs. The same process for installing equipment should be used to determine the costs of removal. The USWC tariff gives the collocator seven days from the removal date jointly negotiated by the collocator and USWC. We reject that provision. The record indicates that equipment vendors and designated contractors require 30 to 45 day notice for disconnecting and removing collocation equipment. We believe 35 days from the jointly negotiated date will permit adequate time to schedule removal of the equipment, while protecting USWC from the possibility that a collocator will use the space for long term storage. Given the consequences of failure to remove the equipment, collocators should have a reasonable time to make necessary arrangements. We do not adopt AT&T's request that USWC return the equipment COD. The provision allowing USWC to keep the proceeds from the sale of the equipment is unreasonable. If USWC is required to sell the equipment, it may deduct from the proceeds any outstanding balances plus any reasonable expenses associated with removing the equipment and selling it. The remaining amounts, however, should be tendered to the collocator.

AT&T objects to the provisions governing involuntary discontinuance of service. AT&T asks that discontinuance be limited to failure to pay amounts owed USWC, not failure to meet any term or conditions. The USWC tariff provides that in the event the collocator fails to comply with the terms and conditions of the tariff/price list, and the company discontinues service, the company may remove the equipment and dispose of it in any way it sees fit. If the equipment is sold, USWC can keep the proceeds. We conclude that USWC must modify the notice procedures and provide the collocator an opportunity to cure a failure to comply with the terms of the tariff. We conclude that USWC shall provide, by certified mail, 28 days notice of its intent to discontinue service. The notice period begins when the notice is delivered to the collocator. The collocator shall cure the defect within that period or negotiate a date to remove its equipment. If USWC is required to sell the equipment, it may deduct from

the proceeds any outstanding balances plus any reasonable expenses associated with removing the equipment and selling it. The remaining amounts should be tendered to the collocator.

Recommendations in the staff proposed tariff. In its tariff, Staff proposes that the Commission order USWC to permit on site monitoring, testing, and control of virtual collocation equipment. USWC objects that these on site activities constitute a taking. Our rule does not require on site monitoring. OAR 860-35-110(6)(f). We will require USWC to permit remote monitoring, testing, and control of virtual collocation equipment.

The Staff also recommends in its tariff that, if there is a dispute between the collocator and USWC over available space at the USWC premises, Staff will investigate and determine if space is available. USWC claims this procedure authorizes Staff to make binding determinations without an evidentiary record. USWC is fully aware that it may request a hearing if it disagrees with a Staff determination.

Finally, the Staff proposed tariff provides that USWC pay the cost of moving a collocator's equipment, if USWC determines that such a move is necessary. USWC claims, without further explanation, that this gives the collocator a preference over other customers. USWC's argument is rejected.

Point of Interconnection

A point of contention between the parties was whether USWC should designate the point of interconnection or whether the point should be mutually agreed upon. The Commission has addressed this issue in Order No. 96-021, with respect to alternative exchange carriers. The same policy should apply here. We stated:

Consistent with our decision that AECs should be treated as cocarriers, the Commission finds that the applicants should be permitted to interconnect with incumbent providers on the same terms and conditions that LECs have used to interconnect their telecommunications networks. This process contemplates that the interconnecting parties will negotiate mutually acceptable locations where network facilities can be joined. In some cases, carriers will decide that the most efficient connection will be at the end office of one of the carriers. In others, it may be more convenient and less costly to establish meet points to connect network facilities. Because these decisions will vary on a case by case basis, the parties are in the best position to determine the manner in which interconnection should take place. We also agree with TCG that the parties will bargain on more equal terms and have a greater incentive to agree upon the

most efficient interconnection if all costs associated with the construction of facilities are shared equally.

At 68.

The Commission anticipates that USWC, GTE and the applicants will negotiate in good faith and will establish mutually acceptable interconnection arrangements in the vast majority of cases. Where parties are unable to agree, they should notify the Commission within three days. We will then take the steps necessary to resolve the dispute on an expedited basis.

At 69.

CONCLUSION

Virtual collocation has the potential of expanding the options available to AECs, IXC's, and ESPs to provide telecommunications services in Oregon. In order to provide customers additional choices, collocators must have reasonable access to the telecommunications facilities of the LECs. GTE, United, and PTI were able to reach agreements with Staff, AT&T, ELI, and OCTA on reasonable conditions for collocation. Because USWC was unable to reach such agreements, our order sets forth our views on the appropriate terms and conditions for USWC's relationship with collocators. In our view, these decisions will promote the development of a competitive telecommunications market in Oregon.

The Commission also takes notice of the recent passage by Congress of the Telecommunications Act of 1996. Under that act, LECs are required to offer physical collocation. We expect that as that enactment is implemented, this proceeding may be reopened.

ORDER

IT IS ORDERED that:

1. Within 30 days of the effective date of this order, U S WEST Communications, Inc. shall file a virtual collocation tariff adopting the tariff attached to this order as Appendix A. When the tariff is filed, U S WEST Communications, Inc. may identify any provisions of the tariff in Appendix A that should be modified to accommodate other USWC tariffs.

2. Within 60 days of the effective date of this order, USWC shall file cost studies and tariff rates, including a markup of 10 to 30 percent, for Sonet (e.g. OC-3, OC-12, and OC-48) services. See Appendix A, page 15.

3. The stipulation in Appendix B between GTE Northwest, Inc. and Staff, AT&T Communications of the Pacific Northwest, Oregon Cable Telephone Association, and Electric Lightwave, Inc. is adopted. Within 30 days of the effective date of this order, GTE Northwest, Inc. shall file a virtual collocation tariff, consistent with the terms of the stipulation. If GTE chooses, it may file its collocation tariff, including physical collocation, within 30 days of the effective date of this order.

4. The stipulation in Appendix C between United Telephone of the Northwest and Staff, AT&T Communications of the Pacific Northwest, Oregon Cable Telephone Association, and Electric Lightwave, Inc. is adopted. Within 30 days of the effective date of this order, United Telephone of the Northwest shall file a virtual collocation tariff, consistent with the terms of the stipulation. If United chooses, it may file its collocation tariff, including physical collocation, within 30 days of the effective date of this order.

5. The stipulation in Appendix D between Pacific Telecom, Inc. and Staff, AT&T Communications of the Pacific Northwest, Oregon Cable Telephone Association, and Electric Lightwave, Inc. is adopted. Within 30 days of the effective date of this order, Pacific Telecom, Inc. shall file a virtual collocation tariff, consistent with the terms of the stipulation. If Pacific Telecom chooses, it may file its collocation tariff, including physical collocation, within 30 days of the effective date of this order.

6. Staff shall initiate a rule making docket to amend the Open Network Architecture rules to:
 - a. Authorize collocators to meet the insurance requirements of OAR 860-35-110 through self insurance.

ORDER NO.

b. Eliminate the requirement in the definition of virtual collocation in OAR 860-35-020 that local exchange carriers own virtually collocated equipment.

..... Made, entered, and effective .

.....
ROGER HAMILTON
Chairman

.....
RON EACHUS
Commissioner

.....
JOAN H. SMITH
Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of this order. The request must comply with the requirements of OAR 860-14-095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-13-070.

EXPANDED INTERCONNECTION AND VIRTUAL COLLOCATION
TARIFF
FOR SWITCHED AND SPECIAL ACCESS SERVICES

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1.7 Service Availability

1.0 GENERAL--ACCESS SERVICES--COLLOCATION

- .1 This tariff contains regulations, rates and charges applicable to the provision of virtual collocation services for switched and special access provided by U S WEST Communications, hereinafter referred to as the Company.

1.1 SERVICE DESCRIPTION

.1 Virtual collocation is a service offered by the Company that provides for the placement and installation of Customer selected equipment, software and databases on the Company's premises. Premises include central offices, remote network facilities, or similar locations owned by the the Company.

.2 Virtual collocation is offered in conjunction with Expanded Interconnection services (EI). Equipment chosen by the Customer and placed on the Company's premises is installed and maintained by the Company under the provisions of this tariff.

.3 The provision of virtual collocation as set forth in this tariff does not constitute a joint undertaking of the Company and the Customer for the furnishing of any service.

.4 All charges for virtual collocation and EI will be determined according to the rates set forth in Section 1.6.

.5 With notification to the Customer, the Company may modify technical, administrative, or environmental procedures to improve virtual collocation use. The Company will be responsible for costs associated with the modifications.

.6 The Company will permit a Customer to transmit information including signaling and protocols, through the Company's network, without interference or manipulation.

ORDER NO.

.7 To the extent that a Company provides enhanced services by means of computer software operating in a processor external to its central office switch, the Company will make available to Customers the same interfaces that the Company uses to enable communications between its switches and external processors.

.8 The Customer will not have physical access to the Company premises. The Company will permit Customers to remotely monitor, test, and control the Customer's virtual collocation equipment.

1.2 EXPANDED INTERCONNECTION

.1 The Company will provide EI for connectivity between any Company provided service or facility and a Customer's facilities or virtually collocated equipment at rates set forth in Section 1.6.

.2 Equipment dedicated to a Customer may interconnect with equipment dedicated to another Customer by means of Company provided EI services.

1.3 VIRTUAL COLLOCATION

.1 Application

.1 The Customer will submit to the Company a written application for the provision of virtual collocation. Applications may be submitted by mail, personal delivery, facsimile, or other reasonable means of delivery. The Company will maintain records documenting requests for virtual collocation.

.2 The application shall include evidence of comprehensive general liability coverage in favor of the company, including protection against death, personal injury, and property damage, issued by an insurer qualified to do business in Oregon, in an amount of not less than \$1 million.

.3 Within 30 days, completed applications will be processed by the Company on a first-come, first-served basis. Within such time, the Company will provide the Customer with an estimate of costs for interconnection and collocation, a list of standard equipment that would not require additional training costs, and an explanation of the ordering process necessary to complete the Customer's service request in a timely manner.

.4 Any changes or modifications in the Customer's finalized order are cause for cancellation of the order. On cancellation, the Customer is entitled to a refund of the paid non-recurring charges less any direct costs incurred by the company. The Customer may request that the paid nonrecurring charges be applied to a new order.

.2 Space Availability

.1 All central offices in Oregon that cannot accommodate virtual collocation are listed in Section 1.7. If the Company states that it does not have sufficient space to allow for virtual collocation and the Customer

disputes the Company's assertion, either party may request the Commission to resolve the dispute. If space is denied either by the Company or the Commission, the Company will offer Comparably Efficient Interconnection. Comparably Efficient Interconnection (CEI) means the provisioning of interconnection and network functionalities to Customers and the Company's own operations under the same rates, terms, and conditions, and on an unbundled and functionally equivalent basis.

.3 Equipment

.1 A Customer may virtually collocate any type of telecommunications facilities or equipment. However, all facilities and equipment must meet industry standards for specific telephonic applications. The Company will cooperate with the Customer to ensure that the Customer-designated equipment will meet both

1.3 VIRTUAL COLLOCATION (Cont'd)

the Customer's specified needs and be compatible with the Company's equipment and operating systems.

.2 The Company does not guarantee the reliability of any Customer-designated equipment. The Company will cooperate with the customer to resolve any incompatibilities between equipment types.

.3 When the Customer orders a DS3 electrical cross-connect for use with switched services, the Customer may also order DS3 to DS1 multiplexing. DS3 to DS1 conversion provides an arrangement that unbundles a single DS3 digital circuit at a rate of 44.736 Mbps to twenty-eight DS1 digital circuits.

.4 Software and database virtual collocation will be limited to facilities designed for external applications such as rapid delivery platforms, service roads, or memory partitions. All requests for software and database virtual collocation must be approved by the Commission unless there

is mutual agreement for such virtual collocation between the Company and requesting Customer.

.5 The Customer has a continuing obligation to provide the Company with all vendor documentation and update bulletins, relating to safety, installation, operation, repair, maintenance, and removal of the equipment. The Customer will provide administrative codes, e.g. common language codes, for all equipment specified by the Customer and installed in central offices. These codes, commonly obtained from the equipment manufacturer or Bellcore, must be consistent with those used by the Company.

.4 Lease

.1 The Customer must provide all equipment and software necessary for virtual collocation that it desires to be dedicated solely for its own use. The Company will lease such equipment from the Customer for \$1 in each central office where the Customer subscribes to virtual collocation. The Company will be responsible for installation and maintenance of such equipment.

.2 Upon termination of the lease, the Customer is responsible for the cost of removing the equipment from the Company's central office. Under the provisions of this tariff, the sole purpose of the lease is to provide the Company with exclusive possessory rights to the equipment. Title to the equipment shall not pass to the Company. All risk of loss shall be with the Customer leasing the equipment to the Company, except as set forth in this tariff.

1.3 VIRTUAL COLLOCATION (Cont'd)

.5 Training

.1 The Customer may train three Company

personnel in each metropolitan area to install, maintain, and repair equipment dedicated to the Customer which is not a type normally used in the Company's network. The Company may also provide the training and charge that Customer accordingly. In all cases the trainers must be accredited and certified.

.6 Points of Interconnection

.1 The Customer will bring its cable (fiber, copper, or coaxial) to a manhole or other designated interconnection point mutually agreed upon, up to and including the entry to the Company central office. This interconnection point will define the physical demarcation between the Customer facilities and the Company network. The Customer will be responsible for specifying optical to electrical or speed conversions, multiplexing, or any other change required to connect the Customer's cable facilities to Company equipment and facilities.

.2 On the Company side of the point of physical demarcation, the Company will extend facilities for the Customer to the virtually collocated equipment or, if requested by the Customer, directly to the Company network facilities and will determine the point of interconnection between the virtually collocated equipment and its network, or between the Customer cable facilities and its network in the case of a direct connection that does not pass through virtually collocated equipment. The Company will be responsible for providing the necessary facilities for interconnection at the rates and terms set forth in this tariff.

.3 Connection to the Company may be made only at a mutually agreed upon interconnection point. In the event that a designated interconnection point cannot be mutually agreed upon by the Company and the Customer, the Commission staff will investigate at the Customer's request, and the Commission will make the final determination.

.7 Installation, Maintenance, and Repair

.1 Except as otherwise provided in this tariff, installation, maintenance, and repair performed on equipment dedicated to a Customer will be charged to the Customer on a time and material basis. The labor charges are set forth in Section 1.6.

.2 If the Company's labor contracts permit, the Company will provide a list of Company approved Contractors for installation, repair, or maintenance of equipment. A Customer will then choose either the Company provided service at

1.3 VIRTUAL COLLOCATION (Cont'd)

tariffed rates or the Company will engage the Customer selected Contractor to perform the service required. The Company will bill the Customer the cost of the service provided by the Contractor. The Company and the Customer may also mutually agree on a Contractor not currently on the approved list.

.3 At the time of initial installation, the Company will cooperatively perform acceptance testing on EI equipment with the Customer. Acceptance testing parameters for EI equipment will be conducted by the Company in accordance with the EI equipment manufacturer's recommendations.

.4 If supplementary air conditioning, electrical, or other environmental control devices are made necessary solely by the equipment leased from the Customer, the Company will provide the devices and charge the Customer for the cost. Disputes over the necessity of the devices will be resolved by the Commission.

.5 The Company will provide primary and backup DC power to the Customer's equipment in the same manner that it provides such power to its own equipment within the central office.

.6 The Company will work cooperatively with the

Customer in matters of joint testing, installation, maintenance, and repair of the collocated equipment.

.8 Movement and Removal of Equipment--Termination of Service

.1 In the event the Company determines that it is necessary to move the Customer's virtually collocated equipment, the Company will be responsible for costs associated with the removal, transport and reinstallation of the Customer's equipment within the central office.

.2 The provision of virtual collocation and its restoration following a service interruption will comply with the provisions of the Telecommunications Service Priority System (TSP). In order to meet the emergency requirements of the TSP System, the Company may rearrange Company conduit, manholes, cable entrances, riser systems, or other Company facilities occupied by a Customer's facilities. The Company will make a reasonable effort to notify the Customer of the necessary rearrangements. If an emergency is caused by an act or omission of the Customer or by the Customer's equipment or facilities, the Customer will be charged for such rearrangement on a time and material basis.

.3 Expansion of the Company's enhanced services operations will not take precedence over existing written requests for virtual collocation. In the event a Company requires space for basic services that is otherwise occupied by a Customer, the Company will give the Customer at least 12 months written notice

1.3 VIRTUAL COLLOCATION (Cont'd)

to vacate. Either party may request that the Commission resolve disputes between the Company and a Customer regarding space requirements for the Company's basic service. Customers will vacate on a last-in, first-out basis or as mutually agreed by all affected parties. Customers so forced to vacate will be offered CEI arrangements.

.4 Upon discontinuance of service, the Customer will, at its expense, arrange to have the Company disconnect and remove all Customer facilities and equipment from Company premises.

.5 The Company and the Customer will jointly negotiate a date for disconnection and removal of equipment. The Customer will arrange for removal of the equipment within 35 days from the jointly negotiated removal date. If the equipment is not removed within that time, the Company may sell the equipment and remit the proceeds of the sale to the Customer, less any outstanding balances, plus any reasonable expenses associated with removing and selling the equipment.

.6 In the event the Customer fails to comply with any term or condition, the Company will give the Customer at least 28 days notice, by certified mail, of its intent to discontinue service. The notice period begins when the notice is delivered to the Customer. The Customer must cure the defect within that period or negotiate a date to remove the equipment. If the Company is required to sell the equipment, it will follow the procedure set forth in Section 1.3.8.5.

.7 Repair and movement of collocated equipment will be performed in accordance with the terms of this tariff. See Section 1.3.7.

.9 Continuing Obligations

.1 The Company and the Customer will immediately notify the other of any condition that may adversely affect the Company's or Customer's network or service. Such conditions will be corrected immediately. Work performed on the collocated equipment shall be in accordance with the terms of this tariff. See Section 1.3.7.

1.4 LIABILITY

.1 The company shall not be liable for any act or omission of any Customer providing a portion of a service, nor shall the company for its own act or omission hold liable any Customer providing a portion of a service.

.2 The company shall be indemnified, defended, and held harmless by the Customer against any claim, loss, or damage arising from use of services offered under this tariff involving:

.1 Claims for libel, slander, invasion of privacy, and infringement of copyright arising from the material transmitted over the facilities or the Customer's own communications;

.2 Claims for infringement of patents arising from combining with, or using in connection with, facilities furnished by the company, facilities or equipment furnished by the Customer;

.3 All other claims arising out of any act or omission of the Customer in the course of using services provided under this tariff;

.4 All taxes (e.g. sales, use, gross receipts, excise or other transaction tax or taxes) relating to the Customer's purchase, sale or use of equipment in connection with service provided under this tariff;

.5 Any equipment leased by the Customer to the company under this tariff which is defective or unreasonably dangerous; or

.6 Any breach of this tariff by the Customer.

.3 The Company does not guarantee or make any warranty with

respect to its services when used in an explosive atmosphere. The Company shall be indemnified, defended, and held harmless by the Customer from any and all claims by any person arising from the Customer's use of services so provided.

.4 No license under patents (other than the limited license to use) is granted by the Company or shall be implied or arise by estoppel, with respect to any service offered under this tariff. The Company will defend the Customer against claims of patent infringement arising solely from the use by the Customer of services offered under this tariff and will indemnify such Customer for any damages awarded based solely on such claims.

.5 The Company's failure to provide or maintain services under this tariff shall be excused by labor difficulties, governmental orders, civil commotions, criminal actions taken against the Company, acts of God, and other circumstances beyond

1.4 LIABILITY (Cont'd)

the Company's reasonable control, subject to a credit allowance for a service interruption.

.6 The Customer shall indemnify and hold harmless the Company from and against all liabilities that may result by reason of any infringement or claim of infringement of any patent, trademark, copyright, trade secret, or other proprietary right relating to equipment leased by the Customer to the Company under this tariff and/or the use thereof. The Customer will defend and/or settle at its own expense any action brought against the Company to the extent that it is based on a claim that Customer equipment leased to the Company under this tariff and/or use thereof, infringes any patent, trademark, copyright, trade secret or other proprietary right.

.7 Except with respect to its own acts or omissions, the Company shall be indemnified, defended, and held harmless by the Customer against any claim, loss, damage, penalty, fine, liabilities, or costs arising from the

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transportation, use, packaging, marking, identification, storage, handling and/or disposition of Customer equipment leased to the Company in connection with any laws, regulations, rules, ordinances, or orders governing hazardous materials, hazardous substances, hazardous wastes and similar items, or governing environmental, health or safety matters, including but not limited to the Hazardous Materials Transportation Act, the Resource Conservation and Recovery Act, the Toxic Substance Control Act of 1976, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and the Occupation Safety and Health Act of 1970.

.8 In the absence of willful misconduct, the Company shall have no liability for any interruption of the Customer's service under this tariff or for interference with the operation of the Customer's facilities, except for a credit allowance for service interruption.

1.5 VIRTUAL COLLOCATION RATE ELEMENTS

The recurring rate elements described below apply to virtual collocation arrangements, and will be assessed at the rates set forth in Section 1.6:¹⁴

- .1 Riser, Per Linear Foot - recovers the cost of riser from the point of interconnection to the virtually collocated equipment.
- .2 Conduit/Innerduct - recovers the cost of providing conduit space for the Customer's cable in the Company's cable vault. This is the area in the Company's central office where the Customer's facilities will enter the building and splicing will occur.
- .3 DC Power, Per Amp - recovers the cost, on a per amp basis, of providing 48 volts DC power.
- .4 Expanded Interconnection Service (EI) - recovers the cost of providing hardware to connect the virtually collocated equipment dedicated to the Customer to tariffed services provided by the Company. The EI is applied on a connection basis for Sonet, DS3, DS1 or DS0-Basic interconnection. EI also includes all necessary Jumper Wires from the Customer's equipment to the DSX Panel, Patch Panel or MUX.

¹⁴The Company may provide facilities or equipment including, but not limited to, conduit, riser supports, and termination frames, in such a fashion that the facilities or equipment is shared or used in common with other parties. Requests by a Customer for dedicated or special arrangements may result in additional charges.

1.6 RATES AND CHARGES

.1 Entrance Facilities, Conduit, and Risers

RATE	MONTHLY	NONRECURRING
	USOC	CHARGE
Entrance Enclosure		
Manhole (Shared)	\$27.61	
Handhole (Non-shared)	\$15.22	
Conduit/Innerduct from Entrance Enclosures to the Company cable vault Per foot,		\$0.42
Core Drill	\$363.13	
Riser Per foot from cable vault to the Customer-designated equipment		\$0.47

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1.6	<u>RATES AND CHARGES (Cont'd)</u>	
	.2	<u>Cabling, Splicing, and Placement</u>
		NONRECURRING
		MONTHLY
RATE	USOC	CHARGE
		Fiber Optic Cable, per foot per 24 fiber increments
		\$0.05
		Fiber Cable Splicing
		Per setup
	\$417.43	
		Per fiber spliced
	\$ 17.40	
		Fiber Cable Placement
		Per foot in conduit and riser
		\$ 1.66
		Copper Cable,
		per foot per 25 pair
		\$0.012
		Copper Cable Splicing
		\$ 91.27
		Copper Cable Placement
		Per foot in conduit and riser
		\$ 1.66
		Coax Cable RG59, per foot
		\$0.20
		Copper Cable Splicing
		\$ 91.27
		Copper Cable Placement
		Per foot in conduit and riser
		\$ 1.66

1.6 RATES AND CHARGES (Cont. d)

.3 Power and Humidification

	NONRECURRING	
MONTHLY	USOC	CHARGE
RATE		
-48 Volt DC Power, per ampere/per month		\$7.52
-48 Volt DC Power Cable Installation per foot per A and B feeder pair from power source to the leased physical space		
20 amp feed	\$50.00	\$.28
40 amp feed	\$68.81	\$.38
60 amp feed	\$86.42	\$.48
AC power per watt		\$.06
Humidification per leased physical space		\$56.45

1.6	<u>RATES AND CHARGES (Cont'd)</u>			
	.4	<u>Expanded Interconnection (EI)</u>		
			NONRECURRING	
			MONTHLY	
			USOC	CHARGE
RATE				
		EI per termination		
		Analog PLTS	TYLCA	\$467.44 \$ 4.02
4.02		DDS	TYLUA	467.44
		1.544 Mbps	TYLDA	313.25 17.22
		44.636 Mbps	TYLEA	329.00 52.50
		OC-3 ¹⁵	XXXX	XXXX XXXX
		OC-12 ²	XXXX	XXXX XXXX
		OC-48 ²	XXXX	XXXX XXXX
		EI Equipment bay - Rack space per shelf		\$5.61

¹⁵ Within 60 days of the effective date of this order, USWC shall file cost studies and tariffs for these services. The tariff rates shall be at cost plus a markup of 10 to 30 percent.

1.6

RATES AND CHARGES (Cont'd)

.5	<u>Labor Charges</u>		
	Out of Normal	Normal Business	
	Business	Hours	Hours
	Virtual Equipment Maintenance		
	per 1/2 hour/per technician.	\$20.48	
	\$31.33		
	Virtual Training	\$23.98	
	per 1/2 hour or fraction thereof.		
	EI Equipment Installation, Change, Removal.	\$20.48	
	\$31.33		
	Labor per 1/2 hour / per technician.		
	EI Engineering Installation, Change, Removal		
	Labor per 1/2 hour / per technician.	\$25.79	
	\$39.30		
	Inspector Labor	\$22.00	\$37.41
	Labor per 1/2 hour / per technician.		

1.7 SERVICE AVAILABILITY

.1 All central offices in Oregon where virtual collocation services are not available shall be listed in this Section.