

(Decision No. R93-1093)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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PETITION FOR RULEMAKING CONCERN-)	DOCKET NO. 92R-050T
ING COLLOCATION AND INTERCONNEC-)	
TION BETWEEN LOCAL EXCHANGE)	RECOMMENDED DECISION OF
CARRIERS AND COMPETITIVE ACCESS)	ADMINISTRATIVE LAW JUDGE
PROVIDERS.)	JOHN B. STUELPNAGEL

Mailed Date: September 8, 1993

Appearances: Michael L. Glaser, Esq., Denver,
Colorado, for Teleport Denver,
Ltd.;

Robert L. Connelly, Jr., Esq.,
Denver, Colorado, for U S WEST
Communications, Inc.;

Roy A. Adkins, Esq., Denver,
Colorado, for El Paso County
Telephone Company;

Thomas F. Dixon, Esq., Denver,
Colorado, for Agate Mutual
Telephone Exchange, Big
Sandy Telecommunications,
Inc., Bijou Telephone Cooperative
Association, Columbine Telephone
Company, Delta County Tele-Comm,
Inc., Eastern Slope Rural
Telephone Association, Farmers
Telephone Company, Nunn
Telephone Company, Nucla-Naturita
Telephone Company, Phillips
County Telephone Company,
Sunflower Telephone Company,
Inc., and Wiggins Telephone
Association;

Mark A. Davidson, Esq., Denver,
Colorado, for Haxtun Telephone
Company, Peetz Cooperative
Telephone Company, Pine
Drive Telephone Company,
Plains Cooperative Telephone
Association, Inc., Rico
Telephone Company, Roggen

Telephone Cooperative Telephone Company, Stoneham Cooperative Telephone Corporation, Strasburg Telephone Company, Universal Telephone Company of Colorado, Willard Telephone Company, and Jones Lightwave of Denver, Inc.;

T. Larry Barnes, Esq., Denver, Colorado, for AT&T Communications of the Mountain States, Inc.;

Michael McGloin, Esq., Denver, Colorado, and Mary A. Piper, Esq., Kansas City, Missouri, for Sprint Communications Company, L.P.;

Sue E. Weiske, Esq., Denver, Colorado, for MCI Telecommunications Corporation;

Peter Q. Nyce, Jr., Esq., Arlington, Virginia, for the Department of Defense;

Terry Parrish, Berthoud, Colorado, for Communications Technology Management Pro Se;

Richard L. Fanyo, Esq., Denver, Colorado, for Vesgas Company;

J. Scott Bonney, Staten Island, New York, for Teleport Communications Group; and

Neil L. Tillquist, First Attorney General, Denver, Colorado, for the Colorado Office of Consumer Counsel.

STATEMENT OF THE CASE

On January 14, 1992, a Petition for Rulemaking in Accordance with § 24-4-103(7), C.R.S., was filed on behalf of Teleport Denver, Ltd. ("TDL"). On January 31, 1992, the Commission issued its Advance Notice of Proposed Rulemaking, with hearings set for August 10 through 13, 1992. This notice directed an Administrative Law Judge to hold hearings and issue procedural orders

concerning dates and formats for filing of written comments in advance of evidentiary hearings. By Decision No. R92-378-I, issued March 20, 1992, hearing was set for April 10, 1992, for purposes of establishing filing dates and formats regarding written comments in advance of evidentiary hearings.

By Commission Decision No. C92-439, hearing dates in this docket were continued to August 31, 1992 through September 4, 1992, and by Decision No. R92-563-I, issued May 1, 1992, hearing for purposes of establishing filing dates and formats in advance of evidentiary hearings was reset for June 5, 1992. By Decision No. C92-767, issued June 5, 1992, the Administrative Law Judge was directed by the Commission to address and make findings on 11 issues, with written recommendations on issues 1 through 4 to be made to the Commission by July 17, 1992. By Decision No. R92-797-I, issued June 17, 1992, written comments addressing item nos. 1 through 4 were ordered to be filed with the Commission on or before June 26, 1992 and replies to be filed before July 6, 1992. On or before August 24, 1992, written comments were ordered to be filed addressing issues no. 5 through 11 of Commission Decision No. C92-767.

On July 30, 1992, the Commission issued Decision No. R92-947-I which set forth conclusions on the four legal issues directed to the Administrative Law Judge by the Commission. Hearing procedure was detailed by Decision No. R92-1017-I, issued August 12, 1992.

On October 23, 1992, the Commission issued Decision No. C92-1334 which noted that the Federal Communications Commission had initiated rulemaking which may affect determinations in this docket. The Administrative Law Judge was directed to take further comments from parties, and, if necessary, conduct further hearings regarding the effect of collocation proceedings pending before the Federal Communications Commission. By Decision No. R92-1417-I, issued November 13, 1992, filing dates for additional briefs or comments and responses thereto were established by the Commission.

Pursuant to the provisions of § 40-6-109, C.R.S., the undersigned Administrative Law Judge transmits to the Commission the record of this proceeding along with this written recommended decision.

FINDINGS OF FACT AND CONCLUSIONS THEREON

Based upon all the evidence of record, the following facts are found and conclusions thereon drawn:

1. Docket No. 92R-050T was commenced by the filing of a Petition for Rulemaking in Accordance with § 24-4-103(7), C.R.S., filed by TDL. On June 5, 1992, the Commission determined that

the significance of issues required the Administrative Law Judge address and make findings on 11 separate issues. Four of these issues were addressed in Decision No. R92-947-I on July 30, 1992. That order directed further that all parties were to submit to the Commission written comments addressing items no. 5 through 11 of Commission Decision No. C92-767. Hearing on these issues was ordered to commence August 31, 1992.

2. Comments, primarily by Competitive Access Providers (CAPs) and Interexchange Carriers (IXCs), suggest that the Commission, by Decision No. R92-947-I, has ruled on the issue of agency authority and determined this Commission may direct any collocation and expanded interconnection. Such is not the case. Any rules which may be adopted would be implemented as a means to correct abuses and prevent unjust discrimination and extortions. This action could be accomplished equally well by disallowing collocation and interconnection so long as all competitive access providers and interexchange carriers are treated without undue discrimination.

El Paso County Telephone Company ("El Paso") distinguishes between collocation and interconnection. Collocation involves the physical placement of an alternative provider's facilities and equipment on the same premises of a local exchange carrier ("LEC") facilities and equipment, usually a central office or switching center. El Paso asserts that collocation is not a service and is not relevant to the Commission's authority under Article 5 (§ 40-5-101, C.R.S.), to order a LEC to construct new facilities to assure adequate service. El Paso asserts the Commission has no authority to order any local exchange provider to allow collocation of an alternative provider's facilities and equipment on the local exchange provider's premises. This issue has been addressed by the Federal Communications Commission and is currently on appeal for final determination. (See F.C.C. Report and Order and Notice of Proposed Rulemaking in CC Docket No. 91-141.)

U S WEST Communications, Inc. ("U S WEST"), asserts that even if the question of compelling a Part 2 Service Provider to offer services regarding collocation not currently being offered was relevant to this rulemaking, the inquiry is much too broad and requires refinement. U S WEST requests the Commission advise the parties whether or not reference to collocation refers to Part 2, Part 3, or Part 4 services, and if references to Part 2 services, whether the Commission is referring to basic local exchange service or other Part 2 services. Moreover, U S WEST requests that should the Commission equate Part 2 Service Providers to LECs, it asks whether the Commission contemplates compelling such providers to provide service inside or outside of the carrier's certificated service areas. Once the Commission clarifies this question, then U S WEST requests further clarification as to whether the Commission ruling applies to

Part 2, Part 3, or Part 4 services individually or in combination.

3. ISSUE NO. 5 - IF THE COMMISSION WERE TO ADOPT RULES COMPELLING COLLOCATION AND INTERCONNECTION, WHAT ARE THE POTENTIAL EFFECTS ON THE LOCAL EXCHANGE PROVIDER (E.G., WHAT IS THE POTENTIAL FOR "CREAM SKIMMING" PROFITS FROM HIGH VOLUME CUSTOMERS PRESENTLY SERVED BY THE LEC, WHAT ARE THE POTENTIAL EFFECTS ON THE REVENUES)?

U S WEST states that if rules are adopted which address only the issues of collocation and interconnection, without addressing the underlying issues of repricing and unbundling, the potential effects would be significant. MCI Communications Corporation ("MCI") noted in its comments that collocation and interconnection need not have any adverse affect on the LECs and LEC ratepayers if appropriate rate structures are developed utilizing the "Building Blocks" principle of unbundled, non-discriminatory costing and pricing. Similarly, AT&T Communications of the Mountain States, Inc. ("AT&T") states that LECs can be competitive with alternative providers on the basis of cost, technology, and service, but asserts that current pricing practices and expectations of high contribution by carrier access services to the LEC's revenue requirement may have to change. Any risk of reduced LEC revenue and contribution from access services would be significantly reduced if the Commission were to comprehensively address the inherent issues of unbundling, interconnection, and "rational" repricing.

4. ISSUE NO. 6 - IF THE COMMISSION ADOPTS RULES COMPELLING COLLOCATION AND INTERCONNECTIONS, WHAT ARE THE POTENTIAL EFFECTS OF THE RATES OF THE LECs (E.G., WILL THE ABILITY OF LECs TO FOLLOW RATE AVERAGING POLICIES BE AFFECTED, WILL PRESENT CONTRIBUTIONS TO JOINT AND COMMON COSTS ON THE PART OF VARIOUS CLASSES SUCH AS RESIDENTIAL BASIC EXCHANGE BE EFFECTED AND HOW)?

If rules on collocation and interconnection are adopted, the rates of the LECs could potentially increase significantly, both in percentage and dollar terms. The investments and expenses of the LEC necessary to provide service to all customers will remain in place, although the ability to recover those associated costs will be limited to the customers which do not have the volume necessary to receive services from competitive telecommunications providers.

Any service which is priced substantially above its "true economic cost" may be vulnerable to cream skinning if collocation and interconnection are mandated. This phenomenon may occur where statewide average pricing distorts the price by averaging high cost (rural) areas with low cost (urban) areas. Statewide averaging allegedly could create an incentive for cream skinning in denser markets. It also may occur where certain services are

priced to recover a disproportionate share of joint and common costs or to recover costs of other services. MCI states such a situation is most likely where underlying costs are lowest - most often due to economies from dense traffic. Sprint Communications Company, L.P. ("Sprint") noted examples of price-cost mismatch. Specifically, Sprint asserts that while interstate switched access charges are priced well below intrastate levels, Sprint believes that interstate switched access charges are also set well above the underlying economic costs of providing the service.

5. ISSUE NO. 7 - WHAT ARE THE POTENTIAL LONG-TERM EFFECTS OF COLLOCATION AND INTERCONNECTION ON RATE REGULATION FOR LECS (E.G., WILL THE COMMISSION BE REQUIRED TO RELAX REGULATION FOR LECS IN ORDER TO ALLOW THEM TO MEET COMPETITIVE PRESSURES)?

As a general principle, there should be parity of regulation so as not to advantage or disadvantage competitors in the marketplace. U S WEST acknowledges that over the long run essential service components will continue to require price regulation. The identification of these components will evolve over time. MCI asserts that local switching will become subject to competitive alternatives in time. MCI states that in the long run, collocation and interconnection are likely to erode the range of an LEC's bottleneck monopoly. That is, eventually, some network building blocks (such as local transport and - in the even more distant future - perhaps local switching) that currently are not generally available to an LEC's customers from alternative sources, will be.

6. ISSUE NO. 8 - WILL COLLOCATION AND INTERCONNECTION RULES AND POLICIES ENCOURAGE BETTER AND MORE TIMELY TELECOMMUNICATIONS SERVICES AND MORE EFFICIENT OPERATIONS ON THE PART OF PROVIDERS SPECIFICALLY INCLUDING EARLIER INTRODUCTION OF NEW OR ENHANCED SERVICES; OR WILL SUCH POLICIES RESULT IN UNNECESSARY DUPLICATION OF FACILITIES AND EQUIPMENT?

Unnecessary duplication of facilities will occur as a result of collocation. As LEC services are displaced, facilities will not be eliminated, but will remain in rate base and simply become under-utilized.

If the Commission enlarges the scope of inquiry and deals with the open network architecture issues in their entirety, and considers fully the implications of unbundling and rational repricing prior to implementing unbundling, collocation and interconnection, then the discipline of the competitive market will insure more timely and efficient operations and the introduction of economically viable new or enhanced services. Only those who can provide more efficient services and/or greater added value will remain in the market. On the other hand, if the Commission fails to address the whole of these issues and retains

alleged existing pricing and service anomalies, it will encourage uneconomic entry and deployment of facilities, not to produce greater efficiency, but to take advantage of the current pricing distortions. U S WEST, however, provides no means of distinguishing economic entry from its uneconomic counterpart.

7. ISSUE NO. 9 - WILL COLLOCATION AND INTERCONNECTION PERMIT ALTERNATE PROVIDERS TO STRIP AWAY BASIC SERVICE FROM THE TRADITIONAL PROVIDER, OR WILL THESE POLICIES RESULT IN THE PROVISION OF SERVICES NOT PREVIOUSLY OFFERED?

Presently, absent a showing of substantially inadequate service, there is a statutory ban on competition for basic local exchange service. If collocation and interconnection are implemented on a "piecemeal" basis, without regard for the underlying issues of rational repricing and unbundling, the alternate providers will undermine the pricing of basic service by stripping away the contribution to basic service found in those private line, special access services, and switched access transport that are priced substantially above their true economic costs. TDL has suggested it has alternate strategies depending on whether competition is permitted in basic local exchange service - thus anticipating an effort to eliminate the existing statutory prohibition. Assuming the implementation of collocation and interconnection without addressing the underlying unbundling and rational repricing required and removal of the prohibition on basic local exchange competition, it is possible that alternate providers would strip away local basic exchange service for those customers where the price for such service substantially exceeds the underlying true economic cost.

8. ISSUE NO. 10 - HOW WILL RULES COMPELLING COLLOCATION AND INTERCONNECTION AFFECT QUALITY OF TELECOMMUNICATIONS SERVICE?

Collocation and interconnection may jeopardize the quality of telecommunications service should competitors offer such services less expensively with lower quality equipment. It is doubtful that a competitive access provider will tender service to rural Colorado except over facilities currently deployed by the LECs. However, if collocation and interconnection are implemented "piecemeal", the LECs could lose revenue streams necessary to maintain quality in the rural markets, given statewide averaging.

9. ISSUE NO. 11 - WHAT IS THE POTENTIAL MARKET FOR COMPETITIVE PROVIDERS IF COLLOCATION AND INTERCONNECTION RULES ARE ADOPTED, INCLUDING THE KINDS OF SERVICES WHICH MAY BE PROVIDED?

Unless the Commission implements rational repricing prior to implementation of unbundling, collocation, and interconnection, the "potential market" for those seeking collocation, assuming erosion of the statutory ban on the provision of basic local

exchange service, is defined by the exploitation of LEC services which are priced substantially above cost. This reasoning suggests that virtually all services, with the exception of residential service, will constitute the "potential market". If the Commission were to implement unbundling and rational repricing, then the market is defined by instances where alternative providers can operate, with respect to one particular service, at lower cost or add incremental value to existing services.

10. The testimony of Tom A. Millensifer stands out as a concern expressed by a telecommunications customer since virtually all of the evidence in this proceeding was presented by LECs, interexchange carriers, and/or competitive access providers. Mr. Millensifer expressed great concern over any proposal that the Colorado Public Utilities Commission would allow competition in the local telephone market. Mr. Millensifer expressed concern that problems and inadequacies that presently exist in long distance service would arise in local service if the Commission were to allow collocation. This testimony detailed many of the problems the witness has faced in obtaining long distance service and concludes that should the Commission allow collocation and competitive local service, the ultimate residential and small business consumer will experience confusion, higher and excessive prices, and abuse of the system that now exists with competitive long distance and many independent local companies.

11. The interexchange carriers and competitive access providers urge the Commission to proceed by issuing mandatory collocation requirements as rapidly as possible, irrespective of developments at the federal level. LECs suggest that the Commission put off the conclusion until such time as the threshold constitutional issues addressed by the Federal Communications Commission are resolved with some degree of finality. The Commission should proceed to address issues of costing methodologies, unbundling, rational repricing, and targeted subsidies as part of further consideration of collocation and expanded interconnection.

12. The Commission has recently opened Docket No. 93M-448T to address these very issues. Collocation and interconnection may well be a part of that docket and further proceedings on rules developing the same should be delayed until that investigation is complete.

13. Pursuant to the provisions of § 40-6-109, C.R.S., the Administrative Law Judge recommends that the following order be entered.

ORDER

THE COMMISSION ORDERS THAT:

1. Docket No. 92R-050T, an investigation into the development of the rules concerning collocation and interconnection between local exchange carriers and competitive access providers, and the existing Rules Prescribing the Provision of Certain Products and Services Within Open Network Architecture, 4 CCR 723-12, should be addressed by the Commission in a review of unbundling and repricing issues. This review should incorporate any final determinations of constitutional issues raised in F.C.C. Report and Order and Notice of Proposed Rulemaking in CC Docket No. 91-141.

2. Docket No. 92R-050T is closed.

3. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

4. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

- a. IF NO EXCEPTIONS ARE FILED WITHIN 20 DAYS AFTER SERVICE OR WITHIN ANY EXTENDED PERIOD OF TIME AUTHORIZED, OR UNLESS THE DECISION IS STAYED BY THE COMMISSION UPON ITS OWN MOTION, THE RECOMMENDED DECISION SHALL BECOME THE DECISION OF THE COMMISSION AND SUBJECT TO THE PROVISIONS OF § 40-6-114, C.R.S.
- b. IF A PARTY SEEKS TO AMEND, MODIFY, ANNUL, OR REVERSE BASIC FINDINGS OF FACT IN ITS EXCEPTIONS, THAT PARTY MUST REQUEST AND PAY FOR A TRANSCRIPT TO BE FILED, OR THE PARTIES MAY STIPULATE TO PORTIONS OF THE TRANSCRIPT ACCORDING TO THE PROCEDURE STATED IN § 40-6-113, C.R.S. IF NO TRANSCRIPT OR STIPULATION IS FILED, THE COMMISSION IS BOUND BY THE FACTS SET OUT BY THE ADMINISTRATIVE LAW JUDGE AND THE PARTIES CANNOT CHALLENGE THESE FACTS. THIS WILL LIMIT WHAT THE COMMISSION CAN REVIEW IF EXCEPTIONS ARE FILED.

5. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOHN B. STUELPNAGEL

Administrative Law Judge

JBS:srs