(Decision No. R90-1350-I)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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COLORADO PAYPHONE ASSOCIATION, ET AL.,	)	
Complainants,	)	DOCKET NO. 89F-442T
v.	)	INTERIM ORDER OF ADMINISTRATIVE LAW JUDGE KEN F. KIRKPATRICK
THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY,	)	
Respondent.	)	

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October 10, 1990

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STATEMENT

By Decision No. R90-1114-I, August 24, 1990, the Complainants were ordered to file a brief on or before August 31, 1990. In accordance with a teleconference between the Complainants and the Respondent, the Complainants' deadline for filing their brief was extended to September 7, 1990. Staff and The Mountain States Telephone and Telegraph Company, d/b/a U S WEST Communications, Inc. (U S WEST), were to file their response to the Complainants' brief no later than September 7, 1990. Complainants filed their brief on September 7, 1990. Staff filed its brief on September 14, 1990.

On September 11, 1990, U S WEST filed its Motion for Extension of Time. U S WEST seeks an extension to and including September 19, 1990, to file its response brief. It is represented the Complainants and Staff have no objection.

The motion should be granted.

On September 19, 1990, U S WEST filed two pleadings. The first is an answer brief. The second is a motion seeking a variance from the rules in order to have direct Commission review of Decisions Nos. R90-705-I and R90-1114-I. The Commission has directed the undersigned to consider the request to reconsider the two interim orders under Rule 86(a)(2) of the Rules of Practice and Procedure.

The purpose of the briefs was to address two issues to determine if they were proper in this complaint proceeding. The first issue is the alleged improper cross-subsidization of payphone services; the second

issue concerned allegations that U S WEST is improperly paying commissions to site owners for placement of payphones.

Complainants profess confusion as to what issues the undersigned refers to when he asked for a brief on the question of cross-subsidization. The undersigned agrees that the 18-page complaint, written largely in narrative fashion, does not contain separate counts relating to cross-subsidization. Paragraph 7 of the complaint, last sentence, states that U S WEST payphone operations are being subsidized by local exchange rate payers. Paragraph 8 appears to refer to that practice as an unlawful act of U S WEST. In its brief the Complainants attempt to portray these allegations as being subsumed by their allegations that the rates charged are not just and reasonable.

U S WEST in its response brief points out that § 40-15-106, C.R.S., only prohibits cross-subsidies of non-regulated services by regulated services, and not between regulated services. U S WEST points out that PAL lines and local exchange service are both regulated services and thus any subsidization which may be flowing between the two is not prohibited by statute. The undersigned agrees with U S WEST, and the cross-subsidization issue should not be an issue in this proceeding.

The second issue to be discussed in the briefs was whether payments by U S WEST to site owners for the placement of payphones was within this Commission's jurisdiction. The Complainants point to the broad statutory language contained in § 40-3-102, C.R.S., making it the Commission's duty to correct abuses. Further, Complainants cite § 40-3-111(2), C.R.S., authorizing the Commission upon complaint to investigate contracts or practices of utilities.

U S WEST contends that since House Bill 1336, codified at § 40-15-101, et seq., C.R.S., does not explicitly give the PUC jurisdiction over the commission payments that therefore the PUC has no jurisdiction.

The undersigned agrees with Complainants that the Commission's general supervisory and investigatory powers over public utilities are broad enough such that the allegations of improper commissions to site owners should not be stricken from the complaint at this stage of the proceeding.

In its pleading seeking reconsideration of Decision No. R90-705-I and Decision No. R90-1114-I, the Respondent points out that it has filed a general rate case on September 14, 1990. U S WEST further represents that the rate case has placed in issue public coin rates, directory assistance, PAL rates, and "other offerings" which constitute much of the instant complaint. On this basis, U S WEST seeks to have the stay in this complaint case reinstated and to have all pricing and tariff issues resolved in the U S WEST general rate case. Respondent buttresses this request with a quotation from Decision No. C90-499, the Commission decision which dismissed Docket No. 89S-685T. This decision, U S WEST claims, shows that the Commission does not wish to consider the possibility of new rates for U S WEST outside the context of a general

rate case. U S WEST also requests that Complainants be joined as Intervenors in the rate case.

No timely response to the request to reconsider was filed by the Complainants.

Staff urges that any rate issues presented by the Complainants be considered only in conjunction with the general rate case of U S WEST.

The undersigned agrees that any rate issues must be resolved in the U S WEST rate case. This is consistent with the Commission's desire to consider rate matters in the contest of a general rate case. Also, it will preclude the possibility of inconsistent orders in this proceeding and the rate case.

Thus the issues remaining for resolution in this complaint proceeding are the following: whether the tariffs affecting the Complainants are unjust and unreasonable (other than rate elements of the tariffs); whether the tariffs are discriminatory; whether U S WEST is rendering inadequate service to the Complainants; whether U S WEST fails to make available "coin lines"; and whether U S WEST is making improper payments to site owners for placement of payphones. Thus the following claims, which were previously held to be part of this complaint, have now been excluded, since they are rate issues, because of the pending general rate case: that the tariffs affecting the Complainants are unjust and unreasonable (rate portions); that U S WEST should render compensation for intraLATA calls originated at the Complainants' payphones; and that U S WEST is unlawfully charging for directory assistance for calls originating at the Complainants' devices.

ORDER

IT IS ORDERED THAT:

1. This complaint proceeding shall proceed on the issues delineated above.

2. This Order shall be effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge

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