

(Decision No. R95-1219)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

APPLICATION OF U S WEST COMMUNI-)
CATIONS, INC., FOR A VARIANCE)
FROM CERTAIN RULES PRESCRIBING)
PRINCIPLES FOR COSTING AND PRIC-)
ING OF REGULATED SERVICES OF)
TELECOMMUNICATIONS SERVICE PRO-)
VIDERS, 4 CCR 723-30.)

DOCKET NO. 95A-363T

RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
KEN F. KIRKPATRICK
ACCEPTING STIPULATION AND
GRANTING WAIVER

Mailed Date: December 8, 1995

Appearances: Kathryn E. Sheffield, Esq., and
William Ojile, Esq., *Pro Hac Vice*, Denver,
Colorado, for U S WEST Communications,
Inc.;

Thomas F. Dixon, Esq., Denver, Colorado, for
MCI Telecommunications Corporation;

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

Deborah S. Waldbaum, Assistant Attorney
General, Denver, Colorado, for the Office
of Consumer Counsel; and

Mana Jennings-Fader, Assistant Attorney
General, for the Staff of the Commission.

I. STATEMENT

1. This application was filed on July 31, 1995, and the Commission gave notice of it on August 4, 1995. Interventions were filed by AT&T Communications of the Mountain States, Inc., on September 5, 1995; by MCI Telecommunications Corporation on

September 1, 1995; by Sprint Communications Company L. P. ("Sprint") on September 5, 1995; by the Office of Consumer Counsel ("OCC") on September 22, 1995 ; and by the Staff of the Commission ("Staff") on October 10, 1995. OCC's intervention and Staff's intervention were untimely, but were granted by the undersigned. Sprint withdrew its intervention on November 13, 1995.

2. The matter was originally scheduled for a hearing to be held on October 23, 26, and 27, 1995 in a Commission hearing room in Denver, Colorado. That hearing was rescheduled at the request of Applicant U S WEST Communications, Inc. ("U S WEST"), for November 29 and 30, 1995, and December 1, 1995 in a Commission hearing room in Denver, Colorado. Active settlement negotiations by the parties produced a stipulation and settlement which was finalized on November 29, 1995. The matter was then called for hearing on November 30, 1995.

3. At the hearing, the stipulation was offered as well as testimony in support of the stipulation. Exhibits A, A1 through A5, B, C, D, D1, F, H, H1, I, K, and L were identified, offered, and admitted into evidence. At the conclusion of the hearing, the matter was taken under advisement.

4. In accordance with § 40-6-109, C.R.S., the undersigned now transmits to the Commission the record and exhibits of this proceeding along with a written recommended order.

A. Findings and Conclusions

1. This application as filed sought a waiver¹ from Rules 4(1)(a), (b), and (c), Rules 4(2)(a)(ii) and (iii), Rule 4(1)(f), Rule 5(2)(a), Rule 6(1)(a), Rule 6(1)(f), and Rule 6(2)(c) of the Rules Prescribing Principles for Costing and Pricing of Regulated Services of Telecommunications Service Providers, 4 Code of Colorado Regulations 723-30 ("Rules"). As part of the stipulation and settlement that was reached by the parties, U S WEST has withdrawn its request for a variance from Rule 4(2)(a)(ii).

2. The evidence and testimony establish that strict compliance with the remaining rules from which U S WEST has sought a waiver will be impracticable or unreasonable.

B. Discussion

1. The stipulation contains several items which merit discussion. First, all parties agree that any waiver should apply only to service rate proposals filed by U S WEST on or before July 1, 1996. This an appropriate period of time given the changing telecommunications environment.

2. U S WEST clarified that its annual filing of fully distributed cost studies and the workpapers associated with those studies, sanctioned by the waiver granted in this proceeding, will be a formal filing for Commission approval.

¹ Some of the testimony indicates a difference between the term "waiver" and "variance." This decision and order uses the terms interchangeably.

3. Pursuant to the variance granted in this proceeding, U S WEST will be allowed to provide a revenue to total loop cost matrix on a quarterly basis rather than with each service rate proposal. However, if there is a significant change, U S WEST will submit the updated information to the Commission within a reasonable time. U S WEST clarified at hearing that any change of 5 percent or more would be considered to be significant and trigger a new filing. Finally, concerning Rules 4(1)(f), 5(2)(a), and 6(2)(c), the waiver granted in this proceeding will allow U S WEST to impute bottleneck monopoly inputs at their tariffed rates and other inputs at their Total Service Long-Run Incremental Costs. U S WEST clarified that with any filing it would undertake to demonstrate why something is or is not a bottleneck monopoly input. This is a recognition that U S WEST has both the burden of going forward and the burden of persuasion on this issue in any filing.

4. The stipulation contains several other provisions which are clear and need no additional explanation.

C. Conclusions

1. The Stipulation and Settlement Agreement submitted by the parties to this proceeding is just and reasonable and in the public interest and it should be accepted.

2. In accordance with § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

II. ORDER

The Commission Orders That:

1. Docket No. 95A-363T, being an application of U S WEST Communications, Inc., is granted in accordance with the terms of the Stipulation and Settlement Agreement, Exhibit K. U S WEST Communications, Inc., is granted a waiver of Rules 4(1)(a), (b), and (c), Rule 4(2)(a)(iii), Rule 4(1)(f), Rule 5(2)(a), Rule 6(1)(a), Rule 6(1)(f), Rule 6(2)(c), and Rule 6(3)(a) of the Rules Prescribing Principles for Costing and Pricing of Regulated Services of Telecommunications Service Providers, 4 Code of Colorado Regulations 723-30, as set forth in the Stipulation and Settlement Agreement. The Stipulation and Settlement Agreement is incorporated into this Order as if fully set forth, and it is attached to this Decision as Appendix A.

2. The waiver granted in this Decision and Order applies to all service rate proposals filed by U S WEST Communications, Inc., on or before July 1, 1996.

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**

KEN F. KIRKPATRICK

Administrative Law Judge

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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO**

* * *

**APPLICATION OF U S WEST)
COMMUNICATIONS, INC.)
FOR VARIANCE FROM CERTAIN) DOCKET NO. 95A-363T
RULES PRESCRIBING PRINCIPLES FOR)
COSTING AND PRICING OF REGULATED)
SERVICES OF TELECOMMUNICATIONS)
SERVICE PROVIDERS, 4 CCR 723-30.)**

STIPULATION AND SETTLEMENT AGREEMENT

U S WEST Communications, Inc. ("U S WEST"), the Staff of the Colorado Public Utilities Commission ("Staff"), the Colorado Office of Consumer Counsel ("OCC"), AT&T Communications of the Mountain States, Inc. ("AT&T"), and MCI Telecommunications Corporation ("MCI"), collectively referred to as the "Parties," respectfully submit this Stipulation and Settlement Agreement ("Agreement") for approval by the Colorado Public Utilities Commission (the "Commission"), pursuant to Rule 83(a) of the Commission Rules of Practice and Procedure:

RECITALS

1. On July 31, 1995, U S WEST filed an Application for Variance from certain of the Rules Prescribing Principles for Costing and Pricing of Regulated Services of Telecommunications Service Providers ("the Rules"), 4 CCR 723-30. The Application was supported by Affidavits of U S WEST witnesses Geraldine Santos-Rach and Dallas Elder.

Exh. No. K
Appl. No. 95A-3637
Witness _____
Date 11-30-95

2. The Rules were adopted in Decision No. C93-612 in Docket No. 92R-596T. Rule 7(3) of the Rules allows a variance from the Rules on good cause shown if the Commission finds compliance to be impossible, impracticable, or unreasonable.

3. U S WEST, with its Application, sought a variance from certain Rules, which variance would apply to all service rate proposals filed by U S WEST between the granting of the variance and July 1, 1996.

4. U S WEST specifically requested a variance from Rules 4(1)(a), (b), and (c), Rules 4(2)(a)(ii) and (iii), Rule 4(1)(f), Rule 5(2)(a), Rule 6(1)(a), Rule 6(1)(f), and Rule 6(2)(c).

5. MCI, AT&T, Sprint Communications Company, LP ("Sprint"), the OCC and Staff all entered appearances and petitioned to intervene in the case, which petitions were ultimately granted. Sprint subsequently withdrew its intervention.

6. The Commission issued an order on September 20, 1995, setting the hearing in this docket for October 23, 26, and 27, 1995. Upon motion of U S WEST, and by agreement of the parties, the hearing dates were vacated and rescheduled for November 29, 30, and December 1, 1995. Intervenor testimony of the Staff, AT&T, and MCI was filed on November 13, 1995, and U S WEST rebuttal testimony was filed on November 20, 1995. The testimony filed by Staff generally supported the variance requests, while the testimony of AT&T and MCI challenged certain of the requests.

7. The Parties entered into good faith negotiations to determine whether a mutually acceptable agreement could be reached with respect to the variance requests, which the Parties could present to the Commission for its consideration and acceptance.

8. The Parties have reached a mutually acceptable agreement regarding the variance requests as detailed below. The Parties believe certain of the variance requests, as detailed below, to be reasonable and to be in the public interest. Based on the Parties' agreements, certain prefiled testimony will be withdrawn and other portions redacted and presented in new form to the Commission with this Stipulation and Settlement Agreement.

NOW, THEREFORE, the Parties agree and stipulate to the following:

AGREEMENT

9. The Parties support a Commission decision approving this Agreement.

10. The Parties have attempted to provide the Commission with redacted testimony which reflects the Parties' agreement concerning certain terminology. In addition, U S WEST will not offer the rebuttal testimony of Dan Purkey; and AT&T will not offer the testimony of Charles Miller.

11. The Parties agree that to the extent that any of the remaining testimony entered into the record in this proceeding is inconsistent with the terms of this Agreement, that testimony should be disregarded. Further, to the extent any of the Parties' testimony refers to testimony that is withdrawn under this Agreement, those references should be disregarded.

12. With respect to the specific variance requests the parties agree that the requests should be granted or resolved in the following manner:

a. Rule 4(1)(a) and Rule 6(3)(a):

The Parties agree that U S WEST should be allowed to submit its Fully Distributed Cost ("FDC") studies and the workpapers associated with those studies annually with its segregated financial results, rather than submitting those FDC studies and workpapers with each

service rate proposal as required by the above two rules. The Parties agree that FDC study results and workpapers do not change significantly from filing to filing and that an annual submission of those studies and results would be reliable and would satisfy the requirements and the intent of the Commission's rules. The Parties also recognize that multiple filings of the same FDC studies and workpapers involves submitting an enormous amount of paper that creates an unnecessary burden. The Parties agree that this variance applies only to the required FDC studies and not to the required Total Service Long Run Incremental Cost ("TSLRIC") studies.

b. Rules 4(1)(b) and (c):

The above rules require that if a provider offers a new or single service which uses a part of the existing investment, a surrogate for a fully distributed cost study must be performed for the new or single service in addition to a TSLRIC study. The Parties agree that U S WEST should be allowed to use Fully Allocated Costs ("FAC"), as defined in this agreement, as a surrogate for FDC for new and single services. The Parties agree that the term FAC refers to: (1) Average Volume Sensitive Costs + (2) Average Service Specific Fixed Costs + (3) a proportionate share of Shared Residual Costs + (4) a proportionate share of Overhead Costs. The Parties agree that, for compliance purposes only and for the period until July 1, 1996, Fully Allocated Costs, as defined in this Agreement are an acceptable surrogate for Fully Distributed Costs for new and single services and that granting this variance request is consistent with the intent of the Commission's rules.

c. Rules 4(2)(a)(ii):

U S WEST originally sought a variance from Rules 4(2)(a)(ii) and (iii).

With respect to Rule 4(2)(a)(ii), U S WEST requested that it be allowed to substitute a partial list of

services to demonstrate group cost coverage rather than an entire list of services. After further review of that rule and discussion between the Parties, the Parties agree that U S WEST does not need a variance from this rule because it does not impact U S WEST's filing requirements in any particular case, but rather, goes to the ultimate burden of showing that group costs are covered. The Parties agree that whether U S WEST has met its burden of showing group cost coverage under this rule is a decision that would be made after all of the evidence in the case had been presented and is not a filing requirement which must be met by U S WEST when it makes an initial filing with the Commission. Based on this agreement of the Parties, U S WEST withdraws its request for variance of this rule. The Parties agree that any testimony in support of or opposing this particular variance request and/or the validity of ADSRC should be disregarded.

d. Rule 4(2)(a)(iii):

The Parties agree that, in order to be in compliance with this rule, U S WEST should be allowed to provide a revenue to total loop cost matrix on a quarterly basis rather than with each service rate proposal. The Parties further agree that if there is a significant change in the results which warrants a filing sooner than the quarterly filing, U S WEST will submit the updated information to the Commission within a reasonable time. The Parties agree that filing this information quarterly is sufficient and furthers the intent of the Commission's rule, especially in light of the fact that the numbers do not normally vary significantly from filing to filing. Given the added protection that a new matrix will be filed earlier if warranted, the Parties agree that this variance should be granted.

e. Rules 4(1)(f), 5(2)(a), and 6(2)(c):

The Parties agree that the Commission should clarify that the intent of these imputation rules is to require imputation of bottleneck monopoly inputs at tariffed rates and the inclusion of other inputs at their TSLRIC. The Parties agree that, if the Commission's clarification is different from that suggested by the Parties, U S WEST should be permitted to impute bottleneck monopoly inputs at their tariffed rates and other inputs at their TSLRIC. The Parties agree that while the rules do not give specific direction, the interpretation suggested meets the purposes of imputation. The Parties agree that the determination of what specific elements are "bottleneck monopoly inputs" in any particular imputation study filed with a specific filing is an issue that will be resolved during the proceedings on the merits of the case, and is not an issue for initial compliance with the Commission's rules.

f. Rule 6(1)(f):

This rule requires a provider to explicitly identify all shared and overhead costs and specify those included in the cost study and those excluded. The rule further requires the provider to separately quantify the reduction in the cost estimates that would result if shared and overhead costs were excluded. The Parties agree that, for purposes of FDC studies only, the Commission should require only the overhead costs and the implied shared costs of the access line for the quantification of the reduction in the costs estimates that would result if the shared costs were excluded in FDC results. FDC studies include shared costs and U S WEST's systems are not designed to show the effects of the cost reductions of shared costs other than the implied shared costs and overhead costs of the access line. Further, the Parties agree that the variance does not

materially affect the usefulness of the FDC studies. The Parties agree that, for FDC purposes, the variance should be granted.

13. With respect to the redacted testimony accompanying this Agreement, the Parties agree that any references to Average Direct and Shared Residual Costs ("ADSRC") are explanatory only and testimony supporting or opposing ADSRC as a valid cost principle is no longer relevant to this proceeding and should be disregarded.

14. Finally, the Parties agree that the variances, when granted, should apply to all service rate proposals filed by U S WEST on or before July 1, 1996.

GENERAL PROVISIONS

15. This Agreement is made for settlement purposes only. No Party concedes the validity or correctness of any regulatory principle or methodology directly or indirectly incorporated in this Agreement. No other significance shall attach to any principle or methodology contained in the Agreement.

16. The Parties have entered into this Agreement as an integrated document and strongly urge that the Commission adopt it in its entirety. Accordingly, in the event any part, or all, of this Agreement is modified or rejected by the Commission, each party reserves the right, upon written notice to the Commission and all other parties within five (5) days of the date of the final written Commission decision, to withdraw from this Agreement without being bound by its terms in this or any other proceeding. In the event that the stipulation is rejected, U S WEST has the right to seek to have the matter reset for hearing.

17. This Agreement may be executed in separate counterparts. The counterparts taken together shall constitute the whole Agreement.

Dated this 30th day of November, 1995.

Respectfully submitted,

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