

{PRIVATE }

(Decision No. C93-1147)

BEFORE THE PUBLIC UTILITIES COMMISSION{PRIVATE }
OF THE STATE OF COLORADO

* * *

IN RE: THE EMERGENCY APPLICATION OF)
U S WEST COMMUNICATIONS, INC. FOR A)
DECLARATORY ORDER TO DIS-CONNECT) DOCKET NO. 93A-461T
ACCOUNTS OF SILVERADO)
COMMUNICATIONS CORPORATION AND)
PEOPLES TELEPHONE COMPANY.)

ORDER SETTING HEARING

Mailing Date: September 17, 1993
Adopted Date: September 8, 1993

BY THE COMMISSION:

On August 27, 1993, U S WEST Communications ("USW" or "Company") filed an Emergency Application For Declaratory Order. In the application, the Company seeks a declaration that it has the legal right to disconnect certain lines provided to Silverado Communications Corporation ("SCC") and Peoples Telephone Company, Inc. ("Peoples") for failure to pay tariffed rates and charges. SCC is a provider of inmate telephone service and is presently authorized to provide telecommunications services to correctional institutions within the State.¹ In the provision of its inmate service to seven correctional facilities, SCC purchases basic exchange access from USW. The lines which the Company seeks to disconnect were originally provided to SCC. On April 1, 1993, however, Peoples and SCC filed a joint application to allow Peoples to purchase the assets of SCC including its Certificate of Authority ("Joint Application"). That proceeding, Docket No. 93A-193T, is presently pending before the Commission.

¹ See Decision No. C91-1675.

The application for declaratory order states that SCC is refusing to pay existing tariffed charges, and that unpaid amounts are accruing at a rate of over \$20,000 per month. In addition, past unpaid amounts on SCC's accounts are in excess of \$400,000. In this application, Docket No. 93A-461T, the Company proposes to disconnect telephone lines in increments of 25 percent at 7 correctional facilities served by SCC because SCC is refusing to pay lawful charges. The Company specifically proposes to begin disconnection of lines on the day following receipt of the Commission's order in this proceeding. Under the Company's proposal, 25 percent of the lines would be disconnected on certain dates, such that on the 60th day following entry of our order in this docket, all lines would be disconnected. The Company seeks a declaration that its proposed action is lawful.

In response to the Company's application, SCC and Peoples² filed an Emergency Petition For Stay of U S WEST Notice of Disconnection of Service on August 30, 1993. This request for stay of disconnection states that SCC is challenging the legality of the tariffed measured rates for inmate service approved by the Commission in Dockets No. 92M-260T and No. 92S-294T in pending judicial review proceedings. SCC and Peoples contend that disconnection of inmate telephone service may cause "serious physical disturbances, violence and other significant security concerns" in the correctional facilities presently served by SCC. Finally, SCC and Peoples offer to place all disputed amounts--both past due amounts and amounts accrued on a going-forward basis--into interest-bearing escrow accounts. Based upon SCC and Peoples' September 7, 1993 response, we understand that there is no disagreement as to the actual amounts at issue under the existing tariff, although SCC and Peoples still dispute the legality of the tariff. The September 7 response makes clear that SCC and Peoples are offering to place the full amounts in dispute into

² Peoples is interested in the outcome as the future owner of SCC's assets if the Joint Application is approved.

escrow accounts.

The Company filed a response to the Emergency Petition for Stay, and SCC and Peoples have filed a response to the Application for Declaratory Order. Based upon the pleadings, we understand: First, SCC and Peoples are withholding payment of tariffed charges due solely to the pending court appeal in Dockets No. 92M-260T and No. 92S-294T. Because SCC and Peoples are challenging the lawfulness of tariffs previously approved by the Commission, and refuse to pay tariffed rates until resolution of the pending court action. SCC and Peoples, in essence, are requesting a stay of our previous orders approving the Public Access Line rate for inmate service. Second, with respect to the proposal to place disputed amounts into escrow, the parties disagree about when the escrow arrangement would end. The Company contends that any such arrangement should end when the Commission enters its decision in the present docket. SCC and Peoples submit that the escrow accounts should terminate only upon resolution of the pending appeal by the court.

Also, in the September 7, 1993 response, SCC and Peoples allege that the Company's Notice of termination of service fails to comply with Rules 9.3.2, 9.4.2, and 9.4.3, Rules Regulating Telecommunications Providers, 4 CCR 723-2. This allegation was entirely unexplained. Nevertheless, SCC and Peoples, by this assertion, raise a factual matter which must be considered at hearing.

In addition, the City and County of Denver ("City") filed an entry of appearance. The City expresses concern with actions which would result in "precipitous" termination of telephone service at the City jail. Since we are setting a hearing in this matter, the City shall be allowed to present evidence regarding the proper schedule for termination of SCC and Peoples' service in the event

disconnection of lines is found to be lawful.

The Commission, therefore, will set this matter for hearing before an Administrative Law Judge to begin at 9 a.m. on September 30, 1993 in a Commission Hearing Room, 1580 Logan Street, Office Level 2, Denver, Colorado. The hearing shall be limited to: (1) the issues regarding the propriety of the Company's notice of disconnection (the allegations made by SCC and Peoples in paragraph 8 of the September 7, 1993 Response to Emergency Application for Declaratory Order of U S WEST Communications), and (2) the proper or advisable schedule for disconnection of service in the event such disconnection is found to be lawful. Hearing is limited to these matters since these are the only disputed factual matters raised by the pleadings. As noted above, the fundamental dispute between USW and SCC and Peoples relates to the legality of our decision in Dockets No. 92M-260T and No. 92S-294T. In accordance with Rule 9.4.3, USW is ordered not to terminate service to SCC and Peoples pending hearing and final order of the Commission, provided that SCC and Peoples place all disputed amounts--both past due amounts and monthly amounts coming due pending hearing--into interest-bearing escrow accounts. In order to avoid the disconnection of service by the Company, SCC and Peoples shall establish the accounts within three days of the effective date of this order.

Disagreement with the validity of the Commission's prior orders is not good cause to refuse to pay tariffed rates. SCC and Peoples, in their pleadings, have not stated good reason to stay the effectiveness of prior orders in Dockets No. 92M-260T and No. 92S-294T, and the Commission will not issue such a stay. In particular, we rule that the pendency of the district court appeal is not sufficient cause to refuse to pay charges previously approved by the Commission. Specifically, in the event SCC and Peoples prevail on appeal, the court or the Commission will be able to order refunds of any overpayments. Since this is the case, it is improper for SCC and Peoples to

unilaterally refuse to pay charges which have been determined by the Commission to be just and reasonable rates.

THEREFORE THE COMMISSION ORDERS THAT:

I. Consistent with the above discussion, this matter is set for hearing before an Administrative Law Judge:

DATE: September 30, 1993

TIME: 9 a.m.

PLACE: Commission Hearing Room
1580 Logan Street, Office Level 2 (OL-2)
Denver, Colorado

Hearing shall be limited to those matters specified above.

2. In order to avoid the disconnection of service before hearing and final decision in this matter, Silverado Communication Corporation and Peoples Telephone Company, Inc. shall place all disputed amounts--both past due amounts and monthly amounts coming due during the pendency of this proceeding--into interest-bearing escrow accounts within three days after the effective date of the Order.

3. Pending hearing and further order of the Commission, and providing that Silverado Communication Corporation and Peoples Telephone Company, Inc. comply with the escrow requirements set forth in ordering paragraph 2 of this Order, U S WEST Communications shall not disconnect any service which is the subject of this dispute.

This order is effective upon its Mailed Date.

ADOPTED IN OPEN MEETING ON September 8, 1993.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners

COMMISSIONER VINCENT MAJKOWSKI
ABSENT.