

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 97A-540T

IN THE MATTER OF THE APPLICATION OF U S WEST COMMUNICATIONS, INC. FOR
SPECIFIC FORMS OF PRICE REGULATION.

**ORDER DENYING MOTION TO REOPEN
DOCKET AND TO APPROVE STIPULATION
AND SETTLEMENT AGREEMENT**

Mailed Date: July 25, 2003
Adopted Date: July 16, 2003

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of the Joint Motion to Reopen Docket, and to Approve Stipulation and Settlement Agreement filed by Qwest Corporation (Qwest), Staff of the Public Utilities Commission (Staff), and the Colorado Office of Consumer Counsel (OCC). The parties, in the Joint Motion, request that we reopen Docket No. 97A-540T for the purpose of considering and approving their Stipulation (Exhibit A to the Joint Motion). Now being duly advised, we deny the Joint Motion for the reasons stated below.

2. This proceeding, Docket No. 97A-540T, concerns the 1997 Application for Specific Forms of Price Regulation by U S WEST Communications, Inc. (now Qwest). The Commission, in Decision Nos. C99-222 (released March 10, 1999) and C99-407 (released April 22, 1999), approved a stipulation between the parties which established specific forms of price regulation for Qwest. The 1999 stipulation approved by the Commission, in part, provided that Qwest would forego rate recovery of certain costs for implementation of Local Number Portability (LNP). That stipulation was modified in Decision No. C00-989 (released

September 7, 2000), in which the Commission approved a further stipulation between Qwest, OCC, and Staff. The 2000 stipulation (LNP Stipulation) modified the provisions in the 1999 stipulation relating to Qwest's recovery of costs for implementing LNP, and use of monies previously intended to reimburse Qwest for LNP costs.¹ The Joint Motion now requests that we approve a new Stipulation in this docket (discussion *infra*).

3. Docket No. 98M-236T concerns the Commission's administration of the Colorado High Cost Support Mechanism (HCSM) established by Commission rules. *See* Rules Prescribing the High Cost Support Mechanism and Procedures for the Colorado High Cost Administration Fund, 4 *Code of Colorado Regulations* 723-41 (HCSM Rules). The Commission recently amended the HCSM Rules to provide support to all access lines in high cost areas. As a result of that modification to the rules, Qwest is now eligible to receive an additional \$10.7 million of high cost support from the HCSM. However, Rule 8.8 of the HCSM Rules requires Qwest to offset that increased support from the fund by reducing rates for some of its services by an amount equal to the additional support. In Decision No. C03-0709 (released June 27, 2003), we confirmed Qwest's eligibility for an additional \$10.7 million of HCSM support, and directed it to file proposed tariffs reducing rates for some of its services by an equal amount.

4. Apparently, the Stipulation proposed in the Joint Motion was filed, at least in part, in response to our directives in Decision No. C03-0709. The Stipulation's main components are:

¹ The discussion *infra*, explains that, as a result of the LNP Stipulation (approved in Decision No. C00-989), Qwest is soon scheduled to reduce the price ceiling for business basic exchange service by \$4.4 million (\$2.1 million annually beginning October 15, 2003; plus \$2.3 million annually beginning February 9, 2004). The Stipulation now proposed by Qwest, OCC, and Staff proposes to use that \$4.4 million for purposes unrelated to business basic exchange service.

Qwest's tariff currently provides that it bill and collect Exchange Zone Increment Charges (Zone Charges) based upon a customer's approximate distance from the serving central office. The Joint Motion states that these Zone Charges, among other revenue sources, enable Qwest to recover on an averaged basis the costs associated with serving customers in areas farther from the serving wire center in sparsely populated areas, or in areas with special geological or other features. In the Stipulation, Qwest agrees to eliminate all Zone Charges. The elimination of these charges will result in an annual revenue loss to Qwest of \$21.7 million.

5. The other main components of the Stipulation proposed in the Joint Motion are intended to offset the \$21.7 million revenue loss from elimination of Zone Charges. First, the parties suggest that this revenue loss constitutes a rate reduction as required in Decision No. C03-0709, and, therefore, entitles Qwest to receive the \$10.7 million additional support from the HCSM. Second, the parties propose to modify the LNP Stipulation approved in Decision No. C00-989 to allow Qwest to use the \$4.4 million now intended to reduce business basic exchange rates to, instead, offset the revenue loss from eliminating Zone Charges.² These two components of the Stipulation (\$10.7 million HCSM funds plus \$4.4 million LNP funds) do not entirely offset the lost revenues from elimination of Zone Charges. The Stipulation proposes that the shortfall be recovered on a permanent, going-forward basis via an increase in the 2004 HCSM fund. To the extent the 2004 HCSM fund does not contain sufficient monies for this purpose, Qwest will seek to recover any shortfall through a revenue neutral filing. The Joint Motion requests that we approve the Stipulation, and, therefore, all the components described above.

² In fact, a small portion of the \$4.4 million would be used make up for revenue losses on the part of Qwest from the expansion of the Garfield, Bijou, and Strasburg local calling areas.

6. We deny the Joint Motion for the reasons stated here. First, we conclude that reopening Docket No. 97A-540T for the purpose of considering and approving the Stipulation is procedurally improper. The only connection between this docket and the Stipulation is the parties' proposal to modify the LNP Stipulation, that is, the proposal to use the \$4.4 million (discussion above) for purposes unrelated to business basic exchange service. Modifying the LNP Stipulation should be considered in this docket. However, the more significant proposals in the pending Stipulation (*e.g.*, the proposals related to the HCSM funding) are unrelated to prior Commission orders in Docket No. 97A-540T. Therefore, it would be procedurally improper for the Commission to approve the Stipulation in its entirety simply by purporting to reopen Docket No. 97A-540T.

7. We further note that the request to modify the LNP Stipulation would adversely affect business basic exchange customers, because the \$4.4 million that would have decreased ceiling prices for business basic exchange will be used for different purposes. Yet, the parties failed to give any notice of this proposal to business customers. This also is improper.

8. To the extent Qwest wishes to receive the presently available \$10.7 million additional funding from the HCSM to offset revenue losses from elimination of Zone Charges, we point out that it is unnecessary for the Commission to approve a stipulation. The HCSM Rules (Rule 8.8) expressly provide that Qwest should file proposed tariffs (through the Advice Letter process) to reduce some of its rates (*e.g.*, Zone Charges) in order to request the additional HCSM funding. If Qwest wishes to implement a reduction (including elimination) of Zone Charges by August 1, 2003, it could request that the Commission approve an application to implement new tariffs on less-than-statutory notice (§ 40-3-104(2), C.R.S.). In any event, the

HCSM Rules do not require, or even contemplate, that the Commission approve any stipulation between the parties for Qwest to receive the additional HCSM funding.

9. Finally, we note that the parties apparently intend that the Commission approve the Stipulation (*i.e.*, find the Stipulation to be just and reasonable), including provisions relating to actions the Commission might take in April 2004 when the HCSM is reset, without any notice to potentially interested parties and without opportunity for interested parties to request a hearing on the Stipulation. This action cannot be justified on the theory that the Commission is simply reopening an existing docket and modifying prior orders in this reopened case. As stated above, most of the provisions in the Stipulation are unrelated to prior orders entered in Docket No. 97A-540T. Those provisions need to be considered in a separate proceeding after proper notice to the public.

10. For the reasons stated above, it would be procedurally improper to approve the parties' Stipulation by granting the Joint Motion to reopen this docket. Therefore, the Joint Motion is denied.

II. ORDER

A. The Commission Orders That:

1. The Joint Motion to Reopen Docket, and to Approve Stipulation and Settlement Agreement is denied.

2. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
July 16, 2003.**

(S E A L)



ATTEST: A TRUE COPY

Bruce N. Smith

**Bruce N. Smith
Director**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GREGORY E. SOPKIN

POLLY PAGE

JIM DYER

Commissioners