

(Decision No. C93-668)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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IN THE MATTER OF THE EMERGENCY)
PETITION OF SILVERADO)
COMMUNICATION CORPORATION FOR)
A DECLARATORY ORDER RE: THE)
COMMISSION'S ORDER IN THE U S)
COMMUNICATIONS, INC. RATE CASE.)

DOCKET NO. 92M-260T

* * *

RE: THE INVESTIGATION AND)
SUSPENSION OF TARIFF SHEETS FILED)
BY U S WEST COMMUNICATIONS, INC.,)
FILED WITH ADVICE LETTER NO. 2254.)

DOCKET NO. 92S-294T

COMMISSION ORDER DENYING EXCEPTIONS
AND WAIVING RESPONSE TIME

Mailing Date: June 11, 1993
Adopted Date: June 9, 1993

BY THE COMMISSION:

These consolidated cases come before us for consideration of Exceptions to Recommended Decision No. R93-199. Docket No. 92M-260T concerns Silverado Communications Corporation's ("SCC") Emergency Petition for a Declaratory Order. In that petition, SCC requested an order that U S WEST Communications, Inc.'s ("USW" or "Company") conversion of its inmate service access lines from flat rated trunk service to the Public Access Line ("PAL") service--the PAL tariff incorporates mandatory measured

service--was improper. SCC also requested an order rescinding the conversion until completion of a pending docket on mandatory measured services.

Docket No. 92S-294T concerns tariffs proposed by the Company in Advice Letter No. 2254. In that Advice Letter, the Company proposed administrative revisions to the PAL tariff. The revisions generally clarify that the PAL tariff accommodates the requirements of inmate service providers such as SCC. For example, the revisions would permit on-the-access-line, premise-based screening to deter potential fraud; the inmate service provider would be allowed the option of blocking calls to the 911 emergency service, a telephone operator, directory assistance service, or telephone repair service; and the phrase, "at locations accessible to the public" was deleted from the tariff to specifically accommodate inmate facilities.

The two dockets were consolidated and the Administrative Law Judge ("ALJ") conducted a hearing beginning on December 15, 1992. The ALJ then issued Recommended Decision No. R93-199 on February 23, 1993. In that decision, the ALJ found that the Company's conversion of SCC's access line to the PAL tariff (and mandatory measured service) was proper. Based upon that finding, the ALJ recommended denial of the Emergency Petition for a Declaratory Order. The ALJ also recommended approval of the proposed tariffs in Advice Letter No. 2254. SCC filed Exceptions to the Recommended Decision, and the Company filed a response to the Exceptions. Now being duly advised in

the matter, we issue our order denying the Exceptions and affirming the Recommended Decision.

RULING ON EXCEPTIONS

SCC claims that the conversion of its flat-rated PBX trunks to the PAL tariff was improper. We disagree with this contention. In this case, the record demonstrates that SCC, in its provision of inmate service, is a reseller of local telephone service. Company witnesses testified, and we find this testimony to be credible, that USW provides access under the PAL tariff to resellers of local service, such as SCC. The evidence in this proceeding indicates that all other providers of inmate service in Colorado take service from the Company under the PAL tariff. In fact, the Company imputes PAL rates to its own inmate services. USW also presented evidence that inmate service providers throughout its 14-state region use PAL lines.

The record shows that the reason SCC was allowed to take service under flat-rated trunks, instead of a PAL, was that in 1989, when access was first ordered from the Company, SCC's fraud protection equipment was not compatible with PAL lines. The Company made an exception for SCC in allowing it to order flat-rated trunk service. During 1990, however, changes in technology and equipment obviated the need for the exception given to SCC by the Company. SCC's service was not then converted to the PAL tariff in light of the pendency of the USW rate case (Docket No. 90S-544T). Since one of the issues in the rate case concerned the propriety of mandatory measured service for resellers, the Company

chose to delay conversion of SCC's lines until a Commission decision in the rate case. Only after the decision in the rate case did USW convert Complainant's lines to the PAL tariff. As noted by the parties, the Commission's decision in 90S-544T reaffirmed the policy that certain resellers of local service must purchase access under a measured rate. In particular, our decisions held that mandatory measured service is appropriate for PALs.

The evidence here further indicates that the Company categorizes inmate service such as that provided by SCC as similar to payphone service (i.e. both involve the resale of local service). As such, the Company requires all inmate service to take access under the PAL rate. We hold that the Company's categorization of Complainant's service as a PAL service was reasonable. In particular, this categorization is consistent with our stated policy that resellers of basic service should be required to purchase access under a measured rate. In brief then, we hold that the conversion of SCC's lines to the PALs was proper. Since that conversion was appropriate, Complainant is required to pay for service under the PAL rate.

As for SCC's contention that PAL lines are technologically insufficient to allow it to meet the needs of its customers, the record does not support the allegation. The Company's evidence indicates that PALs perform essentially the same as a flat-rated trunk in terms of functionality. Moreover, we find it significant that Complainant's inmate service proved to be satisfactory even after conversion.

SCC also challenges the Company's purported refusal to allow it to order other services such as T-1 lines (i.e. broad band digital trunks), Centron, and DSS (i.e. digital switching service). We do not understand that the Company is flatly refusing to offer such services to Complainant. Rather, we understand that the Company objects only to network configurations which would allow the Complainant to use flat rated lines in the resale of local basic exchange service. To the extent, SCC wishes to order services such as Centron or T-1s for own administrative purposes, for toll calling, etc., we understand that the Company would provide the services (again, so long as the network configuration does not permit SCC to resell flat rated local service purchased from USW). We find the Company's position to be reasonable. In particular, this position is consistent with our stated policy that PAL service should be available only on a measured basis. We now clarify that the Company must make available to SCC other services on the same terms and conditions as are available to other customers (i.e. in accordance with the filed tariff), so long as flat rated lines are not used in the resale of local service.¹

We now also affirm the ALJ's determination that Advice Letter 2254 should be accepted. The evidence in this proceeding indicates that the proposed tariff changes are just

¹ The Recommended Decision is clear that previous Commission orders did not require nor permit conversion of hotel service to measured rates. We understand the Company's position to be that such conversion was inadvertent. We here affirm the Recommended Decision's proposed findings and order that the conversion of hotel service was improper and should be immediately changed back to flat rated trunk service. Any payments made in excess of flat rated charges shall be refunded.

and reasonable and should be approved. As noted above, the proposed changes simply clarify that the PAL tariff accommodates the requirements of inmate service providers.

On June 4, 1993, SCC filed its Motion to Strike and to Waive Response Time. We agree with the motion and will grant it.

THEREFORE, THE COMMISSION ORDERS THAT:

1. The Exceptions to Recommended Decision No. R93-199 by Silverado Communications Corporation are denied and the Recommended Decision is hereby affirmed.

2. The conversion of Complainant's inmate service lines to the Public Access Line tariffs by U S WEST Communications, Inc. is hereby found to have been proper, and Complainant is liable for payment of PAL rates as of the date of conversion. The Emergency Petition for a Declaratory Order by Complainant is denied.

3. The tariffs filed with Advice Letter No. 2254 are hereby approved.

4. The Motion to Strike and to Waive Response time is granted.

5. The 20-day period provided for in section 40-6-114(1), C.R.S. for the filing of applications for rehearing, reargument, or reconsideration begins on the first day following the mailing or serving of this decision.

This order is effective upon its mailed date.

ADOPTED IN OPEN MEETING ON June 9, 1993.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

A handwritten signature in cursive script, reading "Christine E. M. Alvar", positioned above a horizontal line.A handwritten signature in cursive script, reading "Vincent Majkowski", positioned above a horizontal line.

Commissioners

CHAIRMAN ROBERT E. TEMMER ABSENT