

(Decision No. R93-199)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

THE EMERGENCY PETITION OF)
SILVERADO COMMUNICATIONS)
CORPORATION, 41 INVERNESS DRIVE,)
EAST ENGLEWOOD, COLORADO 80112,)
FOR A DECLARATORY ORDER REGARD-)
ING THE COMMISSION ORDERS IN THE)
U S WEST COMMUNICATIONS, INC.,)
RATE CASE.)

DOCKET NO. 92M-260T

THE INVESTIGATION AND SUSPEN-)
SION OF TARIFF SHEETS FILED BY)
U S WEST COMMUNICATIONS, INC.,)
FILED WITH ADVICE LETTER)
NO. 2254.)

DOCKET NO. 92S-294T

RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
JOHN B. STUELPNAGEL

- - - - -
Mailed Date: February 23, 1993
- - - - -

Appearances: Robert W. Nichols, Esq., Boulder,
Colorado, for Petitioner
and Intervenor Silverado
Communications Corporation;

Wendy M. Moser, Denver, Colorado,
for Respondent U S WEST
Communications, Inc.; and

Carole Smith-Rising, Assistant
Attorney General, Denver,
Colorado, for Staff of the
Public Utilities Commission.

STATEMENT OF THE CASE

On April 17, 1992, Silverado Communications Corporation (SCC) filed with the Commission an Emergency Petition for a Declaratory Order. SCC states that this Petition was made necessary by U S WEST Communications, Inc.'s unilateral conversion of SCC's line connections from flat rated trunk service to mandatory measured service, thereby immediately increasing SCC's line costs by 227 percent. SCC requests the Commission enter a Declaratory Order stating that:

- (a) The Commission's orders in the U S WEST Communications, Inc.'s rate case do not require or authorize conversion of

Silverado's hotel and inmate service lines to mandatory service; and

- (b) Conversion of Silverado's lines to mandatory measured service should be rescinded pending the outcome of Docket No. 91I-685T.

On April 21, 1992, the Office of Consumer Counsel's Response to SCC's Emergency Petition for Declaratory Order was filed with the Commission, and on April 24, 1992, a Verified Motion to Dismiss Emergency Petition was filed by U S WEST Communications, Inc. (U S WEST).

By Order Setting Hearing and Notice of Hearing, issued May 13, 1992, this matter was set for hearing on May 26 and 27, 1992, at 9:00 a.m. in the Commission Hearing Room, Office Level 2 (OL2), Logan Tower, 1580 Logan Street, Denver, Colorado.

Hearing commenced May 26, 1992, as scheduled, and as a preliminary matter, the Verified Motion to Dismiss Emergency Petition, filed April 24, 1992, by U S WEST was denied, however, Petitioner SCC was directed to provide Notice of Hearing on this docket to all other potentially interested persons, and SCC was directed to make application to the Commission for permission to file notice such notice on less than statutory notice so that an expedited hearing could be still be held. By Order Setting Hearing and Notice of Hearing issued June 5, 1992, this matter was set for hearing June 19, 1992, and July 17, 1992, at the same time and place as previously scheduled.

On April 30, 1992, U S WEST filed Advice Letter No. 2254, dated April 30, 1992. U S WEST stated that the purpose of this filing is to make administrative revisions to the Public Access Line (PAL) Service tariffs to accommodate the unique requirements of inmate facilities.

U S WEST requested that the tariffs accompanying Advice Letter No. 2254 become effective on 30 days' statutory notice, or in this instance May 31, 1992. By Decision No. C92-738, issued June 3, 1992, tariffs filed by U S WEST under Advice Letter No. 2254 were set for hearing on June 19, 1992, and July 17, 1992, at 9:00 a.m. in the Commission Hearing Room, Office Level 2 (OL2), Logan Tower, 1580 Logan Street, Denver, Colorado. The effective date of tariffs filed by U S WEST on April 30, 1992, pursuant to Advice Letter No. 2254 were suspended for 120 days until September 28, 1992, or until further order of the Commission. Furthermore, this docket was consolidated with Docket No. 92M-260T and both were directed to be heard on an expedited basis.

On June 16, 1992, a Motion to Vacate and Reset Hearing Date and Waive Response Time was filed by Staff of the Public Utilities Commission, and on June 18, 1992 a Motion to Intervene and become a party in Docket No. 92S-294T was filed by Inmate Communications Corporation. By Decision No. R92-96-I, issued August 3, 1992, the Motion to Intervene and Become a Party, filed by Inmate Communications Corporation, was granted, filing requirements of parties to these consolidated dockets were established, and hearing in this matter was scheduled for September 21 and 22, 1992, at the same time and place as originally scheduled.

By Decision No. R92-1324-I, issued October 27, 1992, hearing dates in this matter were rescheduled for November 9 and 10, 1992, and by Decision No. C92-1451 issued November 17, 1992, the suspension date of tariff sheets filed by U S WEST with Advice Letter No. 2254-Amended was modified to February 25, 1993, or until further order of the Commission. By Order Setting Hearing and Notice of Hearing, issued December 4, 1992, hearing in the above captioned matter was reset for December 15, 1992, and December 16, 1992, at 9:00 a.m. in the Commission Hearing Room, Office Level 2 (OL2), Logan Tower, 1580 Logan Street, Denver, Colorado.

Hearing commenced December 15, 1992 as scheduled, and Exhibits A through Z and AA through CC were marked for identification and admitted into evidence. At the conclusion of hearing on this matter, parties were given until December 28, 1992, to file Statements of Position on issues raised during hearing. Final statements and briefs were filed by SCC, U S WEST, and Staff of the Public Utilities Commission.

Pursuant to the provisions of § 40-6-109, C.R.S., the Administrative Law Judge transmits to the Commission the record and exhibits of this proceeding along with this written recommended decision.

FINDINGS OF FACT AND CONCLUSIONS THEREON

Based upon all the evidence of record, the following facts are found and conclusions thereon drawn:

1. Petitioner in Docket No. 92M-260T, Silverado Communications Corporation, is a provider of specialized computer based telecommunications services to hotels and motels, correctional institutions ("inmate services"), and similar facilities in Colorado.

2. Respondent U S WEST is a telephone utility certified to provide service in various areas throughout the State of Colorado. Respondent provides telecommunications service to

connect SCC's inmate services and hotel products to the local exchange network.

3. In 1989 U S WEST agreed to provide to SCC semi-public trunk service to connect SCC's inmate services and hotel products to the local exchange network. U S WEST had been informed that a problem existed regarding fraud protection which at that time precluded the use of PAL lines. U S WEST agreed to provide PBX trunk service until PAL service could provide fraud protection.

4. In the period of time October 1991 through March 1992 U S WEST converted SCC's flat trunk lines to Public Access Lines ("PAL") service, citing the Commission's U S WEST rate case order as authority for such action. Subsequently, SCC filed an Emergency Petition for Declaratory Order, seeking a directive from the Colorado Public Utilities Commission that U S WEST is not authorized to make such conversion of inmate services to mandatory measured PAL service.

5. U S WEST filed Advice Letter No. 2254 and accompanying tariff sheets to make certain administrative revisions it deemed necessary to clarify that PAL tariffs accommodates the requirements of inmate service providers.

6. The factual sequence of events describing the actions of U S WEST and SCC from 1989 through hearing in these consolidated dockets, are not significantly in dispute. At issue in this proceeding is whether or not Commission orders in Docket No. 90S-544T (specifically Decision Nos. C91-1128 and C91-1288) allow or prohibit U S WEST authority to convert SCC's inmate services to mandatory measured PAL service. -

7. The Commission, in Decision No. C91-1128, specifically noted that PAL service is a resale service and there should be some differential in rates based on the nature of the service. The Commission stated further that PAL service rates are kept as a required measured rate which recognizes that it is resale service and it may have different usage characteristics.

8. Evidence in this proceeding is sufficient to establish that SCC is a reseller of telephone service, and pursuant to Decision No. C91-1128, should be provided access and other services necessary for resale on a measured basis. Any change to a policy providing service to resellers on a measured service basis may be addressed in Docket No. 91I-685T.

9. SCC asserts a need for complex, computer-based services with wide band digital trunk connections permitting rapid and secure data transmission. SCC states further that PAL service has no such capability. To the extent any provider of inmate services requires access service other than PAL service, U S WEST

should provide measured access service pursuant to other tariffs absent a restriction on resale of such services.

10. Advice Letter No. 2254 revises U S WEST's PAL tariffs to clarify its applicability to inmate facilities. SCC is a reseller of basic local exchange service and should, pursuant to Commission directives, be converted to mandatory measured service. Other inmate providers and resellers are being billed on a usage sensitive basis, and pursuant to Decision Nos. C91-1128 and C91-1288, conversion of SCC's lines is lawful and proper.

11. The evidence in this proceeding is sufficient to establish that the Emergency Petition of SCC for a Declaratory Order, regarding Commission orders in U S WEST's rate case, should be denied, and tariffs filed with Advice Letter No. 2254 should be approved. Decision Nos. C91-1128 and C91-1288 mandate that PAL service and other services for resale should be offered on a measured rather than a flat rate basis. It should be noted however, that PAL is not the only tariff which may be applicable to inmate service providers, and other measured services may be offered to inmate service providers as appropriate.

12. Included in the conversion by U S WEST of SCC line connections from flat rated trunk service to mandatory measured service were certain SCC services to hotels and motels. Such service was specifically accepted from PAL rates by the Commission pending a determination in Docket No. 91I-685T. The conversion of hotels to PAL rates was inadvertant and should be immediately converted back to flat rated trunk service.

13. Therefore, the Commission finds that the Emergency Petition of SCC should be denied, and tariffs filed with Advice Letter No. 2254 approved.

ORDER

THE COMMISSION ORDERS THAT:

1. The Emergency Petition of Silverado Communications Corporation for a Declaratory Order regarding Commission order and U S WEST Communications, Inc.'s rate case is denied.

2. Tariffs filed with Advice Letter No. 2254 are hereby approved and shall become effective upon the effective date of this Decision and Order.

3. Any conversion of hotel service provided by Silverado Communications Corporation shall be immediately connected back to flat rated trunk service, and any payments made in excess of such service shall be refunded.

4. Docket No. 92F-294T is closed.


5. 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.

6. 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.

7. 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.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO


Administrative Law Judge

JBS:srs