Decision No. C97-946

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 96S-331T

RE: THE INVESTIGATION AND SUSPENSION OF TARIFF SHEETS FILED BY U S WEST COMMUNICATIONS, INC. WITH ADVICE LETTER NO. 2617, REGARDING TARIFFS FOR INTERCONNECTION, LOCAL TERMINATION, UNBUNDLING AND RESALE OF SERVICES.

COMMISSION ORDER ON RECONSIDERATION, REHEARING, AND REARGUMENT

Mailed Date: September 17, 1997
Adopted Date: September 9, 1997

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I. BY THE COMMISSION

A. Procedural Background

1. On July 28, 1997, the Commission issued Decision No. C97-739 which established the rates U S WEST Communications, Inc. ("USWC" or "Company"), may charge for interconnection, local termination, unbundling, and resale of service. The following parties filed applications for reconsideration, rehearing, or reargument ("RRR") to that decision: the Colorado Office of Consumer Counsel ("OCC"); the Colorado Payphone Association ("CPA"); AT&T Communications of the Mountain States, Inc. ("AT&T"); and USWC. McLeodUSA Telecommunications Services, Inc. ("McLeod"), filed its motion for reconsideration on August 18, 1977. However that motion primarily requests reconsideration of the Commission's denial of its Motion for Enforcement of Order in Decision No. C97-849. We do not regard this motion for reconsideration as an application filed under § 40-6-114(1), C.R.S. We now rule on those applications for RRR.

B. Discussion

1. Cost Modeling and Input Assumptions for Loop and Other Unbundled Network Elements

a. Both USWC and AT&T request reconsideration of the weight given by the Commission to several adjustments proposed by witnesses in this proceeding to assumptions driving the respective cost studies submitted by these two parties. USWC first argues that acceptance of an 80 percent fill factor is unrealistic and that other testimony supports different fill factors depending on density. Next, USWC is concerned whether the acceptance of reduced maintenance costs in a forward looking model is based upon the methodology employed in the AT&T Hatfield model. Finally, USWC believes that the Commission should reexamine its use of a 10 percent adjustment for overheads, arguing that this adjustment will not allow the Company to reasonably recover its overhead expenses.

b. AT&T generally argues that the Commission's adjustments to the input assumptions used with the Hatfield model were unsupported by the record: First, the use of a 25 percent rate for the percentage of cable requiring boring should be reconsidered. Acceptance of a sharing-of-structure assumption in the range of 20 through 30 percent, rather than the AT&T assumption of 66 percent in a forward-looking cost model is unreasonable. Acceptance of the drop investment and DS1/DS3 facilities adjustments to the Hatfield model proposed by a USWC witness are inappropriate. Finally, the Commission should clarify what the

percentage of aerial plant the Commission judged was reasonable for use in the Hatfield model.

c. With respect to the fill factor assumption, we clarify that the decision did not intend to imply that a single fill factor of 80 percent was deemed reasonable, but rather that the maximum reasonable factor would be about 80 percent. Our finding regarding a reasonable range for fill factors was consistent with testimony of Staff witness Armstrong and AT&T witness Klick as described on page 34 of Decision No. C97-739.

d. As for maintenance costs, while we do not specifically adopt the Hatfield methodology for estimating forward looking maintenance costs, for the purposes of this proceeding and in the absence of a reasonable assessment of such costs by USWC, we accept as reasonable the amount of reduction advocated by AT&T based on its testimony along with that of Commission Staff, as was described on page 29 of Decision No. C97-739.

e. In its RRR, USWC appears to argue that adjustment of the loop cost by 10 percent (for inclusion of excessive overhead costs) will preclude the loop network element from contributing to USWC's overhead expenses. In regard to the amount of the adjustment, we note that both USWC and AT&T witnesses estimated the effect of this single adjustment, by itself, as approximately 10 percent of the monthly recurring loop cost estimated by the Regional Loop Cost Analysis Program ("RLCAP")

cost model of USWC.[1] The amount of "overhead" cost attributed to the RLCAP model was estimated to be as high as 21 percent.[2] In its cost analysis, AT&T proposed to use a value of approximately 10 percent for indirect expenses for a forward looking network. We also note that the difference between the loop rate proposed by USWC and the baseline loop cost from the RLCAP model prepared by USWC and was used as the starting point for the Staff analysis was approximately 51 percent.[3] This difference indicates a significant indirect cost loading by USWC onto the direct physical plant costs of the loop.

f. Generally, indirect costs include factors such as shared administrative and general support plant as well as sales, product management and business fees, all of which could be lumped together in a general category of "overhead" expenses. Therefore, the record does not support the USWC concern that a stand-alone adjustment of 10 percent of the loop cost for excessive overheads would eliminate any contribution to its overhead or indirect expenses, although, as intended, it would reduce them to a reasonable level as described in Decision No. C97-739.[4]

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[1] *See* Exhibit WLF-2 of Exhibit 11 and Exhibit URI-3 of Exhibit 30.

[2] *See* Exhibit 30, p. 16.

[3] *See* Exhibit 1 of Exhibit 36.

[4] Technically, the net effect of this adjustment was closer to 5 percent when all the adjustments we have accepted were first applied to the RLCAP loop estimate of USWC.

g. Regarding the clarification request of AT&T, we note that the percentage values shown in parenthesis on page 39 of Decision No. C97-739 are meant to quantify the maximum potential change in the monthly cost of the loop, as described by USWC witness Fitzsimmons, with additional adjustments by the Commission as more fully described in the decision. They do not reflect the assumed percentage level of penetration to use as a modeling input, as AT&T speculates in its discussion of the percentage of aerial plant.

h. We also correct two typographical errors on page 39 of Decision No. C97-739 regarding the reasonable percentage adjustment in the loop recurring monthly cost for structure sharing and for the drop investment. For structure sharing, the shown adjustment should have been 14 rather than 19 percent and 4 rather than 14 percent for the drop investment.

i. As for the 25 percent figure for the percentage use of boring techniques in placing buried cable plant, we note that AT&T witness Zepp recommended a figure of 20 percent rather than the 50 percent advocated by USWC.[5] While it is unclear as to whether the recommendation by Mr. Zepp was for all development, the assumption of 25 percent as a reasonable percentage was described on page 38 of the decision in comparison to the cost model input assumption by USWC of 50 percent for this

[5] We note that Mr. Zepp buttressed his argument for a lower percentage by quoting a USWC official as expecting boring to be required in difficult areas only 20 through 30 percent of the time.

activity. As noted on page 32 of the decision, USWC assumed 80 percent of all placements would occur in developed areas for which the boring percentage would be applicable. Generally, using this latter assumption of USWC and the accepted 25 percent unadjusted input assumption for boring indicates that, overall, boring would account for 20 percent of buried cable placement costs for the USWC cost model. In our opinion, this is fairly consistent with the testimony of Mr. Zepp as well as the opinion of the USWC official quoted in his testimony.

j. As to whether our judgment concerning a reasonable level of overall sharing of structure of 20 to 30 percent is supported by the record, we note that several USWC witnesses testified that the lower figure within this range is approximately the overall level of sharing currently experienced by USWC.[6] The upper limit allows for a potential 50 percent increase in the overall percentage of structure sharing currently experienced by USWC to account for potential sharing opportunities during the massive rebuilding of the system within the short time frames contemplated within the cost study methodologies. This is in harmony with the recommendations contained in the second report of the state members of the Federal-State Joint Board on Universal Service regarding potential structure sharing.[7]

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[6] For example, *See* Exhibit 8, p. 23.

[7] *See* page 5 of Appendix A of Exhibit V.

k. As for the drop investment and DS1/DS3 facilities adjustment to the Hatfield cost model, the testimony and revisions proposed by USWC witness Fitzsimmons are reasonable. Contrary to the assertion in the RRR of AT&T, it appears from the testimony of Mr. Fitzsimmons that additional equivalent line counts were taken into consideration when he made his adjustment to the Hatfield model assumptions for the DS1/DS3 facilities.[8] While it is reasonable to consider such facilities in determining loop costs, the AT&T method of calculation still appears inappropriate.

l. Pursuant to the previous discussion and that within Decision No. C97-739, we decline to modify our assessments of the cost modeling assumptions for the network elements contained in Decision No. C97-739, as requested by USWC and AT&T.

2. Loop Conditioning

a. USWC requests that the Commission modify its findings on the applicability of loop conditioning charges to allow charges on loops of less than 18,000 feet. In support of its request, USWC suggests that the Commission misinterpreted the testimony of AT&T witness Lynott. On the other hand, AT&T requests that the Commission not impose any charge for loop conditioning to remove load coils. In the alternative, AT&T requests that the Commission expand its decision to include cop-

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[8] *See* Exhibit WLF-2 of Exhibit 11.

per loops terminating within 18,000 feet of the site of a Digital Loop Carrier remote terminal site.

b. We find that the testimony of Mr. Lynott clearly supports our previous decision to disallow charges for the removal of voice-grade conditioning equipment on loops less than 18,000 feet from the central office. In addition, other witnesses[9] came to the same conclusion that a properly designed and maintained network would not have conditioning equipment installed on analog loops within 18,000 feet of the central office. It has long been recognized that analog loops on copper facilities beyond 18,000 feet of the central office would normally require conditioning and that those of less distance would not, except for special situations.[10]

c. The Commission could construct a more detailed methodology for allocation of costs associated with removing unnecessary load coils from existing loops *(e.g.,* allocating payments over the number of loops affected and among the involved providers). However, such a methodology would require complicated tracking and recording of charges and payments for loop conditioning on a widespread basis. Such a methodology is less desirable than the straightforward charges adopted in Deci-

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[9] For instance, *see* Exhibit 45 pp. 30-31.

[10] For example, discussion of this issue can be found in references such as Volume Three of Telecommunications Transmission Engineering by AT&T, first published in the mid 1970's.

sion No. C97-739. We believe that the stated criteria reasonably allocate the costs and potential benefits of load coil removal.

d. In this regard, we also do not adopt the suggestion of AT&T. Although, generally, conditioning of analog loops within a certain distance of a remote terminal of a digital loop carrier is unnecessary, such equipment is still being placed within the USWC system and only serves a minority of current customers. Including a no-charge zone around each remote carrier site would add administrative complexity. We also note that such charges will not apply unless the Competitive Local Exchange Company ("CLEC") requests removal of such coils. Generally, USWC should be removing such unnecessary equipment as it introduces digital loop carrier facilities into an area. Otherwise, its own customers cannot take full advantage of the frequency bandwidth capabilities of the loop to access services that operate at higher data speeds than those available over an analog loop conditioned for the narrow bandwidth constraints of voice-grade service.

e. With respect to USWC's RRR, we clarify that we are not excluding charges for all types of conditioning on loops of less than 18,000 feet. In Decision No. C97-739, we generally referred to the process of removal of load coils and bridge taps from analog loops as "line conditioning." As stated in footnote 76 on page 59 of Decision No. C97-739, we used this term in this limited context only and did not mean to imply an

exemption for charges that may otherwise be incurred to add equipment or electronics to a loop(s) to allow for provision of other services, such as DS1. Pursuant to the preceding discussion, we decline to modify Decision No. C97-739 on this issue.

3. Loop Demultiplexing Requirements

a. On pages 1 through 5 of its RRR, USWC discusses its understanding of Decision No. C97-739 regarding the terms under which additional costs would apply for demultiplexing of DS1 circuits to provide an analog, voice grade loop appearance at the USWC central office. On page 1, USWC states that it believes the Commission left the applicability of this charge for resolution to USWC and the CLECs in the Bona Fide Request ("BFR") process. On page 2, USWC states that the Commission recognized that multiplexing costs are averaged into the statewide average loop costs based on the discussion on page 48 of Decision No. C97-739. In essence, for the central office demultiplexing costs that USWC has proposed to add to the cost of a loop to provide an analog, voice-grade appearance at its central office, the Company believes that Decision No. C97-739 only requires the charge to be applied to loops that require that treatment, according to USWC, this will lead to under-recovery of its costs to provide this function.

b. We first note that USWC confuses the discussion on page 48 of Decision No. C97-739 regarding functionalizing of the loop between feeder, distribution, and the Network Inter-

face Device with the separate additional cost of demultiplexing a DS1 into an analog appearance at the central office. The discussion on page 48 concerns the multiplexing, digital loop carrier, function, and costs normally provided on loop facilities with standard engineering practices. This cost is typically, as was done in this proceeding, included within the total cost of the loop. The additional demultiplexing cost at the central office, which USWC has averaged into its loop costs, is for facilities not normally provided with the loop but, as USWC argues, is needed in this instance to provide the analog loop appearance USWC proposes to offer CLECs at the central office. The discussion on page 40, concerning demultiplexing, as compared to that on page 48, concerning multiplexing, relates to separate functions with distinct purposes and different costs.

c. Decision No. C97-739 requires that USWC continue to allow CLECs to access loops at the digital cross-connect, lightguide cross connect panel, etc., that are normally provided as part of the loop environment as was first required under Decision No. C96-655 in Docket No. 96S-233T or, with certain reservations, from a Sonet Add/Drop Multiplexor as described by AT&T witness Lynott. Since the CLEC would be accessing such loops at the DS1 interface available at the cross-connect, there is no need for the additional demultiplexing costs to breakdown the DS1 which USWC has included within its rate calculations. Allowing the CLEC to avoid the $2.65 recurring cost for demulti-

plexing by taking the loops at the cross-connect encourages network efficiency and does not require the extra demultiplexing costs. For CLEC loops which do require breaking down the DS1 at the central office in order to provide an analog loop appearance, application of the $2.65 recurring rate would be required and would also be included in the average cost for all other loops terminating in the USWC central office, either switched by USWC or handed off to the CLEC as an analog, voice grade loop.

d. Under this structure, the examples of cost recovery using the rates described by USWC on pages 3 through 5 of its RRR are inappropriate.[11] Also, references by USWC to the testimony of Staff Witness Armstrong on this issue are irrelevant as Decision No. C97-739 does not adopt the same position. Consistent with the clarifications contained within the preceding paragraphs, we deny the request of USWC.

4. Loop Cost Deaveraging

a. Beginning on page 7, under the heading of "Subloop Unbundling", USWC requests that all aspects of subloop unbundling, including price, be left for the BFR process. USWC argues that it should be able to set unique prices for each subloop unbundling situation, and that it is not clear in the

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[11] In particular, we note that the analysis on page 4 of the USWC RRR comparing the recurring rate for a DS0 channel from a DS1-DS0 digital multiplexor to an analog loop appearance available from an AD4 channel bank, described by Mr. Lynott, fails to first establish whether the equipment and the associated costs of the equipment are essentially the same. A rate comparison is inappropriate without first establishing that such an equivalence exists.

decision how the rates were derived and whether the rates include recognition of any additional costs which USWC may incur to desegregate the loop.

b. AT&T argues, on page 14 of its RRR, that the Commission has an obligation to deaverage loop costs so as to adopt rates based on costs, noting that even USWC witnesses admitted that the costs of unbundled loops vary by density and length. AT&T further opines that the Commission did not rely upon any cost study in fashioning a hybrid solution, using zones whose rates are based upon historical costs. AT&T requests that the Commission reconsider its deaveraging determination and adopt the nine zones proposed in the Hatfield model.

c. We find no reason to modify our order. As for the USWC RRR, we note that on page 48 of the order it is clearly stated that no additional costs, outside of the normal costs associated with the loop, are included within the functionalized rates shown in the decision. As further stated on page 46, our determination of average rates for the loop functions within the different zones should expedite the BFR process and limit controversy in setting unique loop rates for each subloop unbundling request. We also note that these rates are determined on a basis consistent with our determination of the statewide average loop cost in this docket. Such consistency may well be lost if we defer this question to the BFR process. With respect to the AT&T and USWC concerns regarding the cost justi-

fication of the adopted rates, we note that a description of the sources of the cost data and manner in which the rates were calculated are contained on pages 47 and 48 of Decision No. C97-739. We reject the implication of AT&T that this Commission is constrained to only adopting the representations of costs advocated by a specific party in this proceeding[12] and also note that the rates determined for the various zones are not based on historical cost data.

5. Inconsistent Evaluation of Rates

a. For network element rates other than the loop, AT&T argues that the Commission, in determining rates in this proceeding, has inconsistently applied modifications to the cost studies in making such determinations. AT&T further believes that such rates are arbitrary as there was no determination that such studies were compliant with a Total Element Long-Run Incremental Cost ("TELRIC") methodology. In particular, AT&T brings forth the trunking rates for transport and Common Channel Signaling Access Rates ("CCSAR") as examples of such arbitrary assessments by the Commission.

b. In response, we note that under the Act,[13] we are only required to assess rate proposals for unbundled network elements on the basis of cost (determined without reference to a

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[12] Here we note that even witnesses for AT&T freely admitted that AT&T was acting in its own pecuniary interests in this proceeding. *See* Tr. Vol. 5, p. 86.

[13] The Telecommunications Act of 1996.

rate-of-return or other rate-based proceeding). Rates are to be nondiscriminatory and inclusion of a reasonable profit is allowed. As noted on page 24 of Decision No. C97-739, TELRIC is a costing methodology concept of the Federal Communications Commission ("FCC"). The Eighth Circuit Court recently held that state commissions are not bound by the FCC's costing rules. [14] As we have already noted on page 36 of Decision No. C97-739, we have declined to adopt a specific cost model for evaluating rates in this proceeding. The pronouncements of the Eighth Circuit Court dispose of AT&T's criticism that our determinations were arbitrary since they were not TELRIC compliant.

c. As discussed on page 62 of Decision No. C97-739, we considered the various rate proposals by the parties, especially in light of the potential affect on potential end-users of the CLEC. Generally, we applied this particular criteria to all the USWC rate proposals and compared those proposals to those put forth by the CLECs and other parties. With respect to the transport rates proposed by USWC that were acceptable to us, we did not find the effective difference between the rates proposed by Staff and USWC to be especially significant in light of the direct costs of the CLECs to serve a typical end user.[15] Furthermore, in eval-

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[14] *See Iowa Utilities Board v. Federal Communications Commission*, 1997 WL40301 (8th Cir. 1997)

[15] For instance, assuming 300 minutes of use per end user, the difference between the rate proposals of Staff and USWC for tandem switching would be an effect of less than eight cents per month for the costs of serving that end user.

uating the transport rate proposals put forth by AT&T, it appeared that the AT&T proposed rates, based on its view of forward-looking TELRIC compliant costs, would exceed those proposed by USWC in certain situations.[16] For these specific cases, we determined that the proposals put forth by USWC were just and reasonable as well as nondiscriminatory, and based on a cost evaluation that included a reasonable profit. Based on the request of AT&T, we see no reason to change our opinion.

6. Customer Transfer Tariff Provisions

a. Both the OCC and AT&T take exception with Section 9.1(D), Sheet 1 of the USWC tariff. They believe this section is anti-competitive; is subject to abuse since it provides USWC with unilateral power to transfer customers; and contains no explanation of what constitutes "arrears." These parties conclude that this section should be removed. Although this provision would ensure that USWC receives payment from customers who had a strong desire to change local phone companies, we are unconvinced that this tariff provision is appropriate. Currently, USWC can require customers who have less than exemplary payment habits or account balances to provide a customer deposit. We agree with the OCC and AT&T that this provision is anti-

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[16] *See* Exhibit 34, p. 16 and Exhibit NB-2 of Exhibit 33. The transport proposals of AT&T were not very clear. However, AT&T appears to propose a recurring rate for a CCSAR trunk of $66 plus $2.34 per DS0 equivalent. In comparison to the rates adopted by the Commission, particularly those proposed by USWC, this would result in a higher monthly rate in most cases. AT&T also proposes that a recurring rate of $.0006 per minute be charged for tandem trunk transport which appears to exceed the USWC proposal until the distance sensitive component of the USWC rate exceeds 30 miles.

competitive and provides USWC with excessive and inappropriate power over the ability of end-users to change local exchange carriers ("LECs"). Therefore, we will grant RRR on this item and require USWC to remove Section 9.1(D) on Sheet 1 from its tariff.

7. **Loop Rebundling**

a. Both USWC and AT&T expressed concern with Section 6.1(B), Sheet 1 of the proposed USWC tariff in light of the recent Eighth Circuit Court's decision. USWC argues that the Eighth Circuit Court made it absolutely clear that CLECs cannot require USWC to combine network elements on their behalf. According to USWC, the Court held that the plain meaning of the Act indicates that requesting carriers will combine the unbundled elements themselves to provide finished services, and the Act does not require the incumbent local exchange carrier ("ILEC") to do all the work. Thus, the Commission cannot require USWC to assemble the elements of its network into finished services for the CLECs. AT&T, on the other hand, argues that USWC has an obligation to provide finished retail service at wholesale rates. According to AT&T, the Eighth Circuit Court has upheld the right to obtain finished services through unbundled access. AT&T concludes that the Commission should direct USWC to alter this tariff passage to require USWC to provide loop elements in combination with switching as a finished service available to CLECs at wholesale rates.

b. The Commission notes that the Eight Circuit Court's ruling was issued after the record in this case was closed, but before our decision in this case was mailed. Nevertheless, the Eighth Circuit Court vacated subsections (c) through (d) of FCC Rule 51.315. Subsections (a) and (b) remain in effect. These subsections require an ILEC to provide network elements in a manner that allows requesting carriers to combine such network elements to provide a telecommunications service and except upon request, an ILEC shall not separate requested network elements that the ILEC currently combines. Thus we find the tariff as modified by our initial decision is consistent with the Eighth Circuit Court's ruling and should not be changed. We will, therefore, deny the RRR sought by USWC and AT&T on this matter.

8. TMN Architecture

a. AT&T believes the Commission incorrectly assessed the availability of Telecommunications Management Network ("TMN") architecture and its corresponding application to USWC's nonrecurring charges. AT&T contends that TMN compliant systems are not futuristic systems, but are currently available and that USWC itself employs or will employ them in the near term. Furthermore, AT&T suggests, the Commission failed to address AT&T's concerns regarding the Company's use of the Operations Support Systems ("OSS") to provision unbundled network

service as a designed service rather than as Plain Old Telephone Service ("POTS").

b. We observed in the footnote on page 54 of Decision No. C97-739 that USWC currently has only two applications which utilize the TMN architecture. One of those systems took over three years to develop and cost over $4,000,000. As for the use of design service instead of POTS, we agree with the explanation provided by USWC witness Ms. Notarianni which is contained on page 54 of Decision No. C97-739. Specifically, unbundled loop elements are not directly identified by a phone number; it may or may not be turned up for service at the time it is requested; and provisioning unbundled loops requires coordination of connectivity of the circuit between multiple providers. As a result, we will deny AT&T's request for RRR on this matter.

9. OSS Costs and the ICAM Docket

a. Both the OCC and AT&T argue that OSS costs should not be recovered through an Interconnection Cost Adjustment Mechanism ("ICAM") which will place a surcharge on all CLECs or on all USWC customers. They believe that these costs should be recovered through the customer transfer charge in this docket. Alternatively, if the Commission decides that OSS costs should not be recovered through the customer transfer charge, these parties contend that we should consider these costs in conjunction with establishing the rate for access to OSS as an unbundled net-

work element ("UNE"), in light of the Eighth Circuit Court decision, so that all OSS costs can be dealt with together.

b. We do not believe that the record supports dealing with OSS costs in this docket. In particular, there is no way to verify the accuracy of the cost data provided here. Therefore, the Commission will leave consideration of the OSS costs in Docket No. 97A-011T. The Commission does not believe that recovery need necessarily be limited to inclusion of these costs in an ICAM-type mechanism and such cost recovery may very well need to take into account the Eighth Circuit Court's ruling that OSS must be considered an UNE. For now, however, the Commission denies these portions of the OCC and AT&T requests for RRR.

10. Avoided Cost Studies and Resale - General Comments

a. As for general comments on avoided cost studies, AT&T observes that the Commission has grouped services into a small number of categories. AT&T argues that within each category, there may be services with very different cost structures; therefore, the Commission has not met its objective of developing discounts which reflect cost differences. The Commission should, according to AT&T, employ a single discount for all services. USWC, on the other hand, argues that the Staff relied upon the FCC's avoided cost rules which have since been vacated by the Eighth Circuit Court, so Staff's results should not be used by the Commission.

b. In response to AT&T, the Commission observes that, while the service categories used here are too aggregated to reflect all cost differences, they do allow the results to reflect some of the major differences and are still more precise than using a totally aggregated discount factor (as suggested by AT&T). As far as the USWC criticism is concerned, to the extent that the Staff followed the FCC avoided cost rules, it did so because it judged this methodology to be the most reasonable, not because it was mandated to do so. We considered Staff's studies in that same light. Consequently, the court's overruling of the FCC's rules does not imply that Staff's judgment is faulty or that the Commission should withdraw its reliance upon Staff's results. For these reasons, the Commission denies these portions of the AT&T and USWC RRR.

11. Avoided Cost Studies - Specific Comments

a. As for specific comments on the avoided cost studies, USWC contends: All nonrecurring business office costs in Account 6623 should be excluded from the resale discount calculations. These costs are related to nonrecurring charges which will still be paid to USWC so the costs are not avoided. Including these costs results in an overestimation of both avoided costs and the discounts to be applied to the rates for other services. AT&T, on the other hand, requests that the Commission clarify what adjustments it made to Accounts 6611, 6621, and 6622 when determining the residential basic exchange discount.

b. Concerning the USWC comment, the Commission observes that there is no indication that USWC itself employed the methodology suggested here, namely, the exclusion of non-recurring costs from Account 6623. In addition, no other party attempted to separate recurring and nonrecurring costs and compute the amounts avoided of each. This represents another level of sophistication which might have been a good idea, but which cannot be attempted at this point in the docket. Moreover, even if this separation could be accomplished, there would still be the question of whether these nonrecurring costs are avoided. While USWC contends that they would not be, other parties might argue that they will be the ones to interact with the customers and incur these costs, so that the costs largely could be avoided by USWC.

c. Referring to the AT&T request for a more detailed methodological description, the Commission believes that its description of the derivation of the residential basic exchange discount is already sufficiently clear in the decision. For these reasons, the Commission denies these portions of the USWC and AT&T requests for RRR.

12. Public Access Lines

a. The CPA argues that portions of the USWC testimony indicate that Public Access Lines ("PALs") should receive the business basic exchange discount rate, in contradiction to the notion offered elsewhere in USWC testimony that no costs are

avoided if PALs are sold to resellers instead of end users. CPA concludes that the business discount rate should be adopted. It furthermore believes that setting the discount rate at 0 percent, as the Commission did in Decision No. C97-739, inhibits competition in the PAL area and so is contradictory to state and federal law. Finally, it also views setting the discount rate at 0 percent to contradict specific statements on pages 83 and 84 of the Commission's decision.

b. The Commission has already taken the USWC testimony into account in making its initial decision and no need exists to reconsider it here. Furthermore, the Commission concluded that no costs would be avoided; therefore, so the avoided cost methodology found in the state and federal legislation requires that a zero discount be adopted. The zero discount does not unnecessarily constrain resale because it follows directly from the avoided cost methodology (quote from p. 83). Concerning the quote from p. 84, an "appropriate" discount need not be greater than zero. Moreover, the next paragraph after the quote in the initial decision indicates that PALs will be discussed in a subsequent section so the language on p. 84 does not pertain to PALs specifically. For all of these reasons, the Commission denies CPA's requests for RRR.

13. Centrex Plus

a. USWC argues that Centrex Plus cannot be offered to residential customers because it is a business service

and, in doing so, the Commission would violate the statute limiting resale to those categories of customers to which the service is available on a retail basis from USWC itself. We find that, while the tariff **describes** Centrex Plus as a business service, it does not specifically prohibit residential customers from buying the service. Therefore, the service is available to residential customers even though USWC may not target them in its marketing strategy. Since the statutes focus on availability, and since Centrex Plus is available to residential customers, allowing resellers to sell this service to residential customers does not constitute a violation of the statutes. That is, residential as well as business customers can be considered part of the category of customers to which Centrex Plus is available. Therefore, the Commission denies this portion of the USWC RRR.

b. McLeod seeks reconsideration of the Commission's denial of its Motion for Enforcement of Order. McLeod seeks to purchase Centrex Plus as a resale service as quickly as possible. While we deny the motion, we will require USWC to accelerate the filing of the applicable tariff pages related to Centrex Plus service within ten days of the effective date of this order and the remaining portions of the tariff within 30 days of a final order in this case.

14. Transit Traffic

a. AT&T seeks reconsideration of the Commission's decision regarding transit traffic. AT&T believes that

the decision discriminates against CLECs in favor of small LECs, and thus violates the Act. We disagree. As noted on page 7 of the decision, the small LECs have established compensation arrangements under the Local Calling Area Plan and Community of Interest Calling Plans while CLECs do not. Thus, we believe the different treatment of transit traffic is appropriate since the small LECs and the CLECs are differently situated.

15. Bona Fide Request Process Timeline

a. USWC desires that the Commission modify the bona fide request process timelines in Decision No. C97-739 to use the time frames established in the arbitration with MFS Communications, Inc., rather than that for MCImetro Access Transmission Services, Inc. Without good reason stated for the request, we decline to modify our order.

16. Directory Assistance Charge

a. USWC seeks clarification on the Directory Assistance Charge. Within the decision it states the charge is $0.36. However, in Attachment 2, page 1 of 1 states the charge as $0.35. The Commission adopted the Company cost study for this directory service. The correct amount is shown on Exhibit U to USWC witness Johnson's testimony. That exhibit shows the charge to be $0.34. Therefore, the correct Directory Assistance Charge is $0.34.

17. Terminology Clarifications

a. AT&T request that the Commission clarify what it means by the terms carrier access, existing customers, and information versus telecommunications services when discussing services exempt from resale. The Commission offers the following clarifications in response to this request:

b. "Carrier access" is a wholesale service which is provided by USWC to other telecommunications providers and so should not be subject to any further discounting. It is, in turn, used by these firms to provide interexchange toll service to their customers, not to provide either inter- or intraexchange local service. The latter are covered by the interconnection agreements. Therefore, carrier access refers to interexchange access only.

c. The term "existing customers" appears in the discussion of a grandfathered service and refers to those customers who were already subscribing to the service at the time it became a grandfathered service.

d. With respect to information versus telecommunications services, these terms are defined in Section 3 of the Telecommunications Act of 1996 as follows:

> (41) Information service. The term 'information service' means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommuni-

> cations system or the management of a telecommunications service.
>
> (51) Telecommunications service. The term 'telecommunications service' means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

e. In Colorado there is presently no exhaustive list of information services with which all questions of this nature can be resolved. Ultimately, the question will be determined on a case-by-case basis (*e.g.*, when a party chooses to file a complaint against USWC for withholding a particular service from resale on the basis that it is an information service).

18. Typographical Corrections

a. Attachment 1, page 1 of 2

All of the Expanded Interconnection Channel Termination rates which are shown as "Recurring" should be "Non-recurring."

b. Page 106, Paragraphs 5 and 6

These paragraphs reference the same tariff page. Paragraph 6 should reference Section 6.2(C)6e, Sheet 5 - Descriptions, Terms, and Conditions.

II. RULING ON OUTSTANDING MOTIONS

A. USWC filed a motion on August 29, 1997 to accept its application for RRR. According to USWC, the courier it hired to file its RRR was in the Commission's file room before the 5:00 p.m. deadline. But due to other filings being stamped-in,

the USWC pleading was stamped-in after the deadline. USWC requests that the Commission consider its RRR as timely filed despite the time shown on the filing. We believe good cause has been shown and will waive 4 *Code of Colorado Regulations* 723-1 Rule 7(a). The Commission will grant this motion and consider USWC's application for RRR as timely filed. McLeod filed two motions to strike. The first is with respect to portions of the USWC RRR relating to Centrex Plus resale service. The second motion seeks to strike USWC's response to McLeod's motion for reconsideration. We will deny both of the motions. As for the first motion, we disagree that USWC raised new arguments in its RRR pleading regarding Centrex Plus. As for the second motion, USWC's response was directed to McLeod's motion for reconsideration of Decision No. C97-849 and not a response to an application for RRR.

III. ORDER

A. The Commission Orders That:

1. The applications for reconsideration, rehearing, or reargument are granted, in part, and denied, in part, consistent with the above discussion.

2. The motion filed by U S WEST Communications, Inc., to accept its application for reconsideration, rehearing, or reargument is granted. The two motions to strike filed by McLeodUSA Telecommunications Services, Inc., are denied.

3. U S WEST Communications, Inc., is directed to file appropriate tariff sheets consistent with the above discussion for Centrex Plus service within ten days of this Order. All other tariff sections shall be filed within 30 days of a final order in this case. The latter filing shall be made upon 30 days' notice to the Commission as specified in § 40-3-104(1), C.R.S., and the former filing shall be made on 7 days' notice to the Commission.

4. The 20-day period provided for in § 40-6-114(1), C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the Mailed Date of this Decision.

5. This Order is effective on its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
September 9, 1997

(SEAL)

ATTEST: A TRUE COPY

Bruce N. Smith
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT J. HIX

VINCENT MAJKOWSKI

R. BRENT ALDERFER

Commissioners