

Decision No. C99-222

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

DOCKET NO. 90A-665T

THE APPLICATION OF THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH
COMPANY DOING BUSINESS AS U S WEST COMMUNICATIONS, INC., FOR
APPROVAL OF A FIVE YEAR PLAN FOR RATE AND SERVICE REGULATION AND
FOR A SHARED EARNINGS PROGRAM

**ORDER APPROVING STIPULATION WITH
MODIFICATIONS**

Mailed Date: March 10, 1999
Adopted Date: February 2, 1999

TABLE OF CONTENTS

I. BY THE COMMISSION.....	4
A. INTRODUCTION.....	4
B. Stipulation and Settlement Agreement.....	6
C. Price And Service Quality Plan--Stipulation (Section III.)	8
D. Pricing Flexibility.....	8
1. Introduction.....	8
2. The Parties' Positions.....	8
3. Commission Decision.....	10
E. Price Ceilings (Section III.A.1 - 3).....	14
1. Introduction.....	14
2. Joint Respondents.....	15
3. Commission Decision.....	16

F. Price Floors (Section III.A.4)	17
1. Introduction	17
2. Treatment of Shared Costs	18
a. Joint Respondents	18
b. Commission Decision	19
3. Imputation	21
c. Introduction	21
d. Commission Decision	23
4. When The Price Floor Should Be Established	24
a. Joint Respondents	24
b. Commission Decision	25
5. Constraints On Challenges To Commission Orders (Section III.A.4.c.)	26
a. Introduction	26
b. Commission Decision	26
6. Price Changes Between Ceilings And Floors (Section III.A.5.a & b.)	27
G. Deaveraging (Section III.A.5.c.)	27
1. Introduction	27
2. Joint Respondents	27
3. Commission Decision	28
H. Contracting Flexibility (Section III.B)	29
1. Introduction	29
2. Joint Respondents	30
3. Commission Decision	31
I. Packaging/Bundling (Section III.C.)	33
1. Introduction	33
2. Joint Respondents	33
3. Commission Decision	34
J. Cost Support (Section III.D)	34
1. Introduction	34
2. Joint Respondents	35
3. Commission Decision	35

K. Service Quality Plan.....	36
1. Stipulation (Section III.E.1).....	36
2. Joint Respondents.....	37
3. Commission Decision.....	38
L. Docket No. 90A-665T.....	39
1. Stipulation (Section III.E.2).....	39
2. Commission Decision.....	39
M. Other Issues.....	39
1. Issues and Signatories' Positions.....	39
2. Commission Decision.....	40
N. Rate Modifications, Foregone Rate Increases, and Capital Investment.....	41
1. Stipulation (Section IV) and Amendment to the Stipulation.....	41
2. Joint Respondents.....	43
3. Commission Decision.....	45
O. Miscellaneous Issues.....	48
1. Stipulation (Section V).....	48
2. Commission Decision.....	49
P. Rule Waivers.....	51
1. Stipulation (Section VI.F).....	51
2. Commission Decision.....	51
Q. State Action Antitrust Defense.....	52
R. Pending Motions.....	52
II. ORDER.....	53
A. The Commission Orders That:.....	53
B. ADOPTED IN COMMISSIONERS' DELIBERATIONS MEETING February 2, 1999.....	54

I. BY THE COMMISSION

A. INTRODUCTION

1. This matter comes before the Commission for consideration of the Application for Specific Forms of Price Regulation filed by U S WEST Communications, Inc. ("USWC" or "Company") on October 31, 1997, and the related Stipulation and Settlement Agreement submitted by USWC, Commission Staff ("Staff"), and the Colorado Office of Consumer Counsel ("OCC") on October 29, 1998. USWC filed the application in reliance on the provisions of §§ 40-15-501 *et. seq.*, C.R.S. In its application, USWC requested comprehensive pricing flexibility for all its regulated retail services with the exception of residential and first line business basic local exchange.¹

2. The Commission issued notice of the application and a number of parties intervened in this case including: Staff; the OCC; MCI WorldCom, Inc.; ICG Telecom Group, Inc.; Sprint Communications Company L.P.; Teleport Communications Group, Inc. of Colorado; the Colorado Telecommunications Association; the Telecommunications Resellers Association; and the Department of Defense and all other Federal Executive

¹ With respect to residential and first line business basic local exchange, the application proposed to cap rates for those services at the levels existing at the time of submission of the application.

Agencies.² In accordance with prior orders in this case, we conducted hearings on USWC's application and related matters on May 26 through June 4, 1998, and June 24-25, 1998. The parties submitted Closing Statements of Position on August 17, 1998.

3. On October 29, 1998, USWC, Staff, and the OCC filed their Stipulation and Settlement Agreement accompanied by their Joint Motion to Accept Stipulation and Settlement Agreement. As discussed *infra*, the parties to the Stipulation requested that the Commission adopt that agreement as a complete disposition of this case. The Stipulation was not agreed to by all parties to this proceeding. In particular, the Joint Respondents³ opposed the Stipulation for various reasons.

4. Pursuant to suggestions of the Joint Respondents, we issued public notice of the Stipulation and allowed interested persons additional opportunity to intervene in this case. ACI Corporation and NEXTLINK Colorado, L.L.C. intervened on November 20, 1998; McLeodUSA Telecommunications Services, Inc., intervened on November 23, 1998. In Decision No. C98-1190, we permitted all parties to file testimony regarding the Stipulation, and, specifically, on the issue whether the Commission should adopt the Stipulation as a complete resolution

² As noted *infra*, NEXTLINK Colorado, L.L.C., ACI Corporation, and McLeodUSA Telecommunications Services, Inc. intervened after the Stipulation and Settlement Agreement was filed on October 29, 1998.

of this case. On January 14-15, 1999, we conducted additional hearings for the specific purpose of considering the Stipulation. Now being duly advised in the premises, we adopt the Stipulation and Settlement Agreement between USWC, Staff, and the OCC.

B. Stipulation and Settlement Agreement

1. On October 29 1998, USWC, Staff and the OCC offered their Stipulation and Settlement Agreement to resolve this case. On November 23, 1998, the parties submitted their amendment to Stipulation and Settlement Agreement. We refer to the Stipulation and Settlement Agreement and the Amendment to Stipulation and Settlement Agreement collectively as "Stipulation" or "Agreement." The Stipulation proposes a form of price regulation other than rate of return regulation for USWC. Under the Stipulation USWC would be granted: price flexibility between Commission determined floors and ceilings, contracting flexibility, the ability to bundle and package services, and continued quality of service regulation. In addition, the signatories recommend that the Commission initiate a rulemaking proceeding to determine the extent to which all jurisdictional telecommunications providers should be required to provide information to the Commission on the status and

³ MCI WorldCom, Inc., ICG Telecom Group, Inc., NEXTLINK Colorado, L.L.C., and McLeodUSA comprise the Joint Respondents.

development of competition in Colorado. The Stipulation also proposes specific rate and revenue reductions totaling \$84 million dollars annually for five years. On November 20, 1998, MCI WorldCom on behalf of its regulated subsidiaries; ICG Telecom Group, Inc.; NEXTLINK Colorado, L.L.C.; and McLeodUSA ("Joint Respondents") issued a joint response in opposition to the Stipulation and Settlement Agreement.

2. In accordance with the suggestions of the Joint Respondents, we issued notice of the Stipulation, allowed additional opportunity for intervention in this proceeding, and scheduled additional hearings for the specific purpose of considering whether we should adopt the Agreement. We conducted the additional hearing on January 14 and 15, 1999. At those hearings, USWC, Staff, and the OCC presented testimony in support of the Stipulation; the Joint Respondents presented testimony in opposition.⁴ We will adopt the Stipulation and Settlement Agreement with only minor modification and clarification as a complete resolution of this proceeding. This order explains our rationale, addresses the Joint Respondents' comments and objections, and describes the clarification and modification approved here. A copy of the Stipulation and the Amendment to the Stipulation is attached to this Order.

⁴ The parties prefiled their direct testimony on January 8, 1999.

**C. Price And Service Quality Plan--Stipulation
(Section III.)**

1. The Stipulation proposes a form of price regulation other than rate of return regulation for USWC. Under the proposed Price and Service Quality Regulation Plan ("PSQR") USWC would be granted pricing flexibility between Commission determined floors and ceilings, contracting flexibility, and the ability to bundle and package services, all subject to continued quality of service regulation.

2. Before discussing the specifics of the PSQR (or "Plan") the Commission notes that the parties to the Stipulation agreed that nothing in the PSQR plan is meant to supersede any flexible regulation already granted with respect to specific regulated services. The Commission concurs with this understanding.

D. Pricing Flexibility

1. Introduction

The first matter the Commission will address with regard to the PSQR plan is the threshold question of whether USWC should be granted price flexibility within Commission determined price floors and price ceilings.

2. The Parties' Positions

a. In their opposition to the Stipulation the Joint Respondents claimed that the primary concern of the

Commission, in reviewing the Stipulation, should be the protection of Colorado consumers through the promotion of vigorous competition. They further contended that many portions of the Stipulation will, " . . . cut competition off at the knees." Joint Response, page 3. The Joint Respondents also argued that, in the Stipulation, USWC seeks virtual deregulation of every retail service except for residential and first line business basic exchange, and "extraordinary" contracting flexibility. Joint Response, page 3.

b. In their testimony filed on January 8, 1999, the signatories took exception to these characterizations of the Stipulation. Mr. Bruce Smith, Director of the Colorado Public Utilities Commission, stated in response to the question whether he agrees with the contention of the Joint Respondents that the Agreement virtually deregulates retail services:

Absolutely not. First, there is no formal deregulation of any service, and there is no reclassification of any USWC service. USWC is bound by all Commission rules with some exception for waivers and variances that will carry forward. There are ceilings which protect consumers and floors which protect the competitive process. USWC is more stringently regulated under the Plan than the CLECs are regulated under the default scheme. If USWC is virtually deregulated as the CLECs assert, then the CLECs must be deregulated completely. Commission regulation of USWC under the Plan is less rigorous only with respect to pricing flexibility, a necessary step on the road to the statutory goal of the fully competitive marketplace for telecommunications services.

Direct Testimony of Bruce Smith, pages 26-27.

c. Dr. Neil Langland, also testifying on behalf of Staff, asserted in his Direct Testimony:

The Commission has employed the price band technique for over ten years for a variety of services. In fact, since the Costing and Pricing Rules became effective, the scheme for USWC services not subject to a specific form of relaxed regulation has been in effect a banded price scheme just like the one in the Agreement, except that under the Agreement there is less lead time necessary to change prices within the band, and greater contracting and bundling flexibility. Therefore, the change in regulatory scheme in the Plan is not a significant departure in terms of price listed services.

Direct Testimony of Neil Langland, page 4.

d. In addition, Mr. Kenneth Reif, Director of the OCC stated:

The OCC supports the Plan because it affords USWC with an appropriately limited degree of pricing flexibility commensurate with the level of developing competition in Colorado, protects consumers from unwarranted price increases and deterioration in service quality and is consistent with Colorado statutes and Commission rules.

Kenneth V. Reif Supplemental Testimony, page 3.

3. Commission Decision

a. The Commission agrees with those parties who point out that little evidence of existing effective economic competition in Colorado's telecommunications markets was presented in this Docket. In light of this circumstance, the

Commission is sensitive to the potential effects on competition of our disposition of this case.

b. Much of the testimony in this Docket related to this question. For example, many parties argued that a lack of effective competition creates a circumstance, where in the absence of appropriate regulation, a firm with market power has the ability and self-interest to: raise prices above costs, "dump" a disproportionate share of its joint and common costs on captive customers, cross-subsidize competitive with non-competitive services, predatorily price, and construct other barriers to entry. The competing local exchange carriers ("CLECs"), the OCC and Staff raised these possibilities in response to USWC's original contention in this docket that price floors and ceilings were not a necessary part of the new form of regulation to be applied to USWC. The Commission agrees with this reasoning and finds that USWC's pricing flexibility must be constrained within Commission determined ceilings and floors to prevent potential abuses of market power.⁵

c. However, the Commission also agrees with the signatories to the Stipulation (e.g., the Direct Testimony of Mr. Smith cited above) that the Stipulation does not provide virtual deregulation of USWC's retail services. Rather, it

⁵ Other regulatory tools required to curb market power are cost support, cost allocation and quality of service standards.

requires a floor and ceiling for each and every service individually, including residential and business basic exchange. This regulatory scheme is very different from the virtual deregulation which USWC did, in fact, initially request here. In addition, as we discuss later in this order, we agree with the signatories' contention that the Stipulation provides a number of other regulatory mechanisms that will, in combination, act to curb USWC's market power and will ensure, among other things, that USWC does not price services in an anticompetitive manner. These regulatory mechanisms include: USWC's adherence to the costing and pricing rules, cost support, and constraints on USWC's contracting flexibility.

d. We also find that the imposition of price ceilings and floors on USWC is entirely consistent with the Commission's decisions in Docket No. 97R-177T, which created a default form of relaxed regulation with no price ceilings or floors for the CLECs. In those decisions, we premised our refusal to impose price ceilings on the CLECs on the continued availability to consumers of the price regulated services of USWC. In other words, the Commission found that USWC's prices would serve as an effective price ceiling on CLEC services. As an example, in Decision No. C98-46, pages 6-7, in denying the OCC's request for price ceilings for the CLECs, we stated:

The Commission reiterates that if the problems the OCC has identified do in fact emerge the Commission stands ready to address them forcefully. However, in our judgment, the imposition of price ceilings on the CLECS is in conflict with the promotion of effective competition at least as long as the price regulated services of USWC remain as an alternative for consumers.

e. Similarly, in denying Staff's request to impose price ceilings for the CLECs on residential basic service in Docket No. 97R-177T, we concluded:

The Commission denies this Staff request. The Commission believes its decision not to apply price ceilings and floors to the CLECs, even on the provision of residential basic exchange service, is consistent with the Commission's legislative mandate to encourage the emergence of a competitive telecommunications market in Colorado. Given current market conditions, USWC's prices will serve as an effective price ceiling on CLEC services. The Commission believes that CLEC price ceilings would be a needless and burdensome supplement to existing market incentives.

Decision No. C98-46, pages 8-9.

f. We conclude that the Stipulation's imposition of price ceilings and floors is consistent with the continuing need to curb USWC's market power and provide a constrained alternative to the CLEC offerings. We also conclude that the Stipulation's grant to USWC of price flexibility within Commission-determined price floors and ceilings is in the public interest. It is consistent with the Commission's statutory mandate to encourage the transition to competitive telecommunications markets in Colorado while protecting and

maintaining the wide availability of high-quality telecommunications services.⁶

E. Price Ceilings (Section III.A.1 - 3)

1. Introduction

a. The Stipulation addresses a number of procedural details with regard to price ceilings. These include how the initial price ceiling should be set (Section III.A.1), the circumstances and constraints on USWC's ability to change price ceilings (Section III.A.2), how USWC will be allowed to change price ceilings (Section III.A.2) and the role tariffs play in establishing both the price ceiling and the initial price list (Section III.A.3). These sections of the Agreement did not draw any objections in the testimony presented at the supplemental hearings. Therefore, we simply note our support of these proposed procedures relating to price ceilings.

b. The Commission will comment on two issues with regard to the proposed price ceilings. The first is the question whether the price ceiling for basic exchange service should include zone charges where applicable. The second is the

⁶ We also find that the PSQR plan is consistent with federal and state statutes and Commission rules as outlined in pages 4-7 of the Stipulation. The objections of the Joint Respondents that the Stipulation is inconsistent with statutes and Commission rules are dealt with in this order in discussion of individual sections of the Stipulation. The Commission rejects those objections and finds that the Stipulation does conform to Commission rules and statutes.

request of the Joint Respondents that USWC's price ceilings be adjusted to reflect changes in productivity and inflation.

c. In Decision No. C98-1252 we required responses from the signatories clarifying certain points in the Stipulation. The first clarification question posed by the Commission was whether the price ceilings for basic exchange service should include zone charges where applicable. The signatories' response was that they should. The Commission agrees and now clarifies that the price ceilings for basic exchange service will include zone charges where applicable.

2. Joint Respondents

a. As stated above, the Joint Respondents requested that we impose a productivity offset factor and price indexing in any alternative form of regulation approved for USWC. Joint Response pages 2 and 30. In its Answer and Cross Answer testimony relating to USWC's application, the OCC did advocate productivity and inflation adjustments in the price regulation plan for USWC. However, in his Supplemental Testimony filed January 8, 1999 (page 4), Mr. Reif, explained why he believes that, even though the Stipulation does not contain such price indexing and productivity offsets, it does ensure that customers receive the benefits of competition in the form of lower rates:

[W]hile the Plan does not contemplate automatic annual reductions in rates to capture productivity gains, the proposed \$84 million in rate and revenue reductions ensures that customers receive the benefit of competition in the form of lower rates regardless of the degree of competition that actually develops in the near term.

b. Mr. Reif also referred to an analysis conducted by the OCC that was used to compare the revenue impacts on USWC of productivity offsets and price indexing versus the Agreement's proposed \$84 million annual reduction in USWC's revenues:

[W]e evaluated the impact on USWC's revenues over five years assuming the Commission adopted the OCC's proposed PSQR plan including a 4.5% productivity factor. We selected a 4.5% productivity factor as the starting point of our analysis because we believed it was at the upper end of what the Commission reasonably could be expected to approve, taking into account the disparate opinions of USWC's, OCC's, and Staff's experts regarding productivity. Assuming a 2 percent rate of inflation and a 4.5% productivity factor, Mr. Nelson estimated that USWC would experience approximately \$249 million in revenue reductions over the five year term. Based on this analysis Mr. Nelson determined that a \$45 million rate reduction over the five years yielded the same net present value as the 4.5 percent productivity factor. The Office used this analysis as one benchmark against which to judge the justness and reasonableness of the final \$84 million.

Reif Supplemental Testimony, page 10.

3. Commission Decision

a. We note that the purpose of productivity offsets and price indices is to help ensure that consumers benefit from the efficiency gains stimulated by competition. We

are satisfied with Mr. Reif's explanations and believe that the \$84 million annual reduction in USWC's revenues does adequately ensure that consumers will benefit from the Stipulation. To the extent the Stipulation stimulates further competition, it will also ensure that customers automatically share in any further efficiency gains in the form of lower prices.

b. The Agreement also enables the Commission to review all proposed changes in price ceilings and does not prohibit the Commission from considering productivity offsets and price indexing in the future.⁷ Should the Commission consider such actions in the future, the Stipulation does not prohibit the participation of any party in any such proceeding.

c. We therefore deny the suggestion of the Joint Respondents, and will not impose a productivity offset or price indexing on the regulatory scheme proposed by the Stipulation.

F. Price Floors (Section III.A.4)

1. Introduction

Price floors are designed to protect competitors from anti-competitive behavior by USWC. In response to USWC's original price regulation proposal in this case, all parties contended that the absence of price floors for USWC would harm competition. For example, in his Answer Testimony, ICG/WorldCom

witness Dr. Montgomery contended that the absence of any price floors or imputation tests in USWC's pricing flexibility proposal was, "in and of itself a fatal flaw."⁸ Although the Stipulation specifies price floors for USWC, the Joint Respondents remain concerned about possible anti-competitive behavior by the Company. The issue of price floors is also entwined with the potential ability of USWC to deaverage its retail prices, and with the scope of the contracting flexibility granted to USWC by the Stipulation. See discussion *infra*.

2. Treatment of Shared Costs

a. Joint Respondents

(1) The Stipulation recommends (Section III.A.4.a) that the price floor be set at Total Service Long Run Incremental Cost ("TSLRIC") as described in Rule 4 CCR 723-30-2.45(a)-(d) in the Commission's

(2) Costing and Pricing Rules. However, the Joint Respondents raised important concerns as to whether the TSLRIC price floor for individual services should contain some portion of shared costs,⁹ and whether (and how) the TSLRIC

⁷ The same is true for price floors.

⁸ Montgomery Answer Testimony, page 12. Staff and the OCC raised similar concerns. See, for example, Answer Testimony of Staff witness Mr. Wendell Winger, pages 44,45; Answer Testimony of OCC witness Susan M. Baldwin, pages 81, 82.

⁹ Mark L. Stacy, Cross Answer Testimony, on behalf of MCI, pages 4-5; William Page Montgomery, Cross Answer Testimony on behalf of ICG and WorldCom, pages 14-15.

price floor should include imputation. The Joint Respondents also asked the Commission to modify the Stipulation to require USWC to establish price floors for the services contained in the price list before we implement any pricing flexibility through such lists or any contracts.

(3) With regard to the first concern of the Joint Respondents, the signatories to the Stipulation do not believe that shared costs should be part of the TSLRIC price floor for any individual service, although they do acknowledge that the Costing and Pricing Rules require that the prices must be set so that total revenue from any group of services covers the TSLRIC for that group of services.¹⁰ The Joint Respondents, on the other hand, believe that shared costs should be included in the price floors for individual services.

b. Commission Decision

(1) We will deny the request of the Joint Respondents to require USWC to include some portion of shared costs in the TSLRIC price floor for individual services. We agree with USWC, Staff, and the OCC that Rule 30 of the Commission's Costing and Pricing Rules requires that shared costs be covered by the revenues from a group of services, but does not specify that a certain allocation of shared costs be

¹⁰ Joint Responses to Order Requiring Responses Clarifying Stipulation filed January 8, 1999 by USWC, Staff and the OCC, Response to Question 2.

applied to any specific service. Therefore, the price floor for an individual service need not include a portion of shared costs. Since the Stipulation will allow USWC to lower the price of any particular service to its direct (TSLRIC) cost, the Commission, with the assistance of interested parties such as the CLECs, will be vigilant to the potential for cross-subsidies and predatory pricing on the part of the Company. With regard to that vigilance, the Stipulation (Section III.D, pages 14-15) provides:

Within six months following Commission adoption of the Agreement, US WEST shall provide Staff and OCC with nonrecurring and recurring rate/cost comparisons and TSLRIC cost studies for the services identified in Attachment B. The rate/cost comparisons shall contain: the USOC, the price, the quantities sold, and an estimate of the per-unit TSLRIC plus shared costs, and shall be updated annually. U S WEST shall update the supporting cost studies as required to ensure that no cost study is more than three years old and shall provide any such updates to Staff and OCC with its annual rate/cost comparisons.

(2) This type of cost support will aid the Commission in ensuring that the Company does not price services in an anti-competitive manner. Of course, in reviewing any USWC tariff/price list proposal, nothing in the Stipulation or the Commission's rules precludes the Commission from assigning shared costs to any price floor.

3. Imputation

c. Introduction

(1) The second question raised by the Joint Respondents is whether the TSLRIC price floor should include imputation and if so in what manner. The signatories believe that imputation is appropriate as required by Rule 4 CCR 723-30-4.1(f) and Rule 4 CCR 723-39-7.6.¹¹ The Joint Respondents believe that adherence to these rules alone will not result in imputation of unbundled network element ("UNE") prices in all instances in which such imputation is warranted.

(2) Various CLEC witnesses representing some of the same parties as comprise the Joint Respondents discussed the issue of price floors in their written and oral testimony relating to USWC's original application. For example, Dr. Montgomery filed Answer Testimony and Cross Answer Testimony on behalf of ICG and WorldCom. In his Answer Testimony (Exhibit S1, pages 8-12), he asserted that price floors are necessary and discussed the effect of UNE prices on USWC's ability to engage in a price squeeze or other predatory conduct. In his Cross Answer Testimony (Exhibit T, page 14) he recommended that price floors be established on the same cost basis as UNE prices. Ms. Notsund, on behalf of TCG, addressed these issues in her Cross Answer Testimony Exhibit Z, pages 4-5. She claimed that price floors for services must include the total element long run

¹¹ Joint Responses to Order Requiring Responses Clarifying Stipulation, Response to Question 3.

incremental cost ("TELRIC") prices for each UNE used to provide the service, to avoid USWC price squeezes. Mr. Stacy on behalf of MCI also filed Direct Testimony addressing price floors. Exhibit U, pages 12-14. He claimed that, without a price floor restriction, USWC would have the ability to use price squeezes to prevent entry.

(3) The parties to the Stipulation believe that the Costing and Pricing Rules, including the imputation requirements, resolve any concerns with UNEs. For example, OCC witness Mr. Nelson discussed why price floors in compliance with the Commission's Costing and Pricing Rules were sufficient in his Cross Answer Testimony. Exhibit R, pages 10-17. Mr. Nelson claimed that the standards and methodology employed by the Costing and Pricing Rules were specifically designed to effectively prevent cross-subsidy and predatory pricing. Exhibit R, page 12.

(4) According to Staff witness Dr. Langland, "The plan does not extend appreciably USWC's ability to price below cost. Commission rules and the monitoring should provide a reasonable check on any such behavior." Direct Testimony of Neil E. Langland, January 8, 1999, page 5.

d. Commission Decision

(1) The Commission affirms that the imputation language in 4 CCR 723-39-7.6.2 is conceptually

correct when it states that imputation is only necessary in the case of a monopoly bottleneck facility. The market power associated with bottleneck facilities requires imputation to protect competitors and consumers from market abuses such as price squeezes. On the other hand, we conclude that it is economically incorrect to require USWC to impute UNEs into its price floors when there is no bottleneck facility involved. Such a requirement would in effect produce a regulatorily induced price squeeze on USWC and make it difficult for USWC to compete with the CLECs.¹² This would mean less competition and fewer choices for Colorado consumers.

(2) The Commission realizes that the term "bottleneck monopoly" is not defined specifically in our rules. This term may be a contested issue in future proceedings. However, we are confident that it will be in the self-interest of each party to make its case as clearly and forcefully as possible in specific future proceedings, and the Commission will be able to make informed decisions that are in the public interest.

4. When The Price Floor Should Be Established

a. Joint Respondents

¹² According to USWC witness McDaniel, "If you begin to impute UNEs, to me, in that scenario, the customer has that easily available alternative; then you are putting me in a price squeeze, because I'm not free to go down to my direct cost." Transcript, January 14, 1999, pages 108-109.

(1) The third issue raised by the Joint Respondents is whether the actual price floor for each regulated retail service should be formally established at the beginning of the PSQR.

(2) Section III.A.4.b of the Stipulation recommends that the actual price floor not be formally established at the beginning of the plan. Rather, the Stipulation proposes that, at any time, any person may protest a proposed price list addition or modification, or may file a complaint asking the Commission to determine if a price is set below the appropriate floor. The Stipulation also proposes that USWC shall bear the burden of proof that the price it charges is at or above the price floor.

(3) The Joint Respondents contend that adopting the Stipulation would result in price floors that do not exist until someone challenges the price of a particular service (Joint Response, page 6), and that challenges to the TSLRIC price floors would consume too much time. Joint Respondents argue that, as a result, USWC will be able to foreclose or delay the development of effective competition. Therefore, the Joint Respondents ask the Commission to modify the Stipulation to require USWC to establish price floors for the services contained in the price list before it implements

any pricing flexibility through such lists or any contracts.
Joint Response, page 8.

b. Commission Decision

The Commission denies the request to modify the Stipulation to require USWC to establish price floors for the services contained in the price list before it implements any pricing flexibility. We find that the Stipulation provides adequate safeguards since it provides that any person may protest a proposed price list addition or modification, or may file a complaint asking the Commission to determine if a price is set below the appropriate floor. Notably, the Stipulation requires that USWC, in the event of such challenges, bear the burden of proof that the price it charges is at or above an appropriate price floor. In addition, the Commission again notes that the Stipulation (Section III.D, pages 14-15) requires USWC, within six months following Commission adoption of the Agreement, to provide Staff and OCC with nonrecurring and recurring rate/cost comparisons and TSLRIC cost studies for the services identified in Attachment B. The Stipulation also provides that those rate/cost comparisons shall contain the USOC, the price, the quantities sold, and an estimate of the per-unit TSLRIC plus shared costs, all to be updated annually. According to USWC witness McDaniel, these services cover about

90 percent of USWC's revenues.¹³ This provision will give the Commission sufficient information to monitor USWC's prices for possible anti-competitive effects.

**5. Constraints On Challenges To Commission Orders
(Section III.A.4.c.)**

a. Introduction

The signatories to the Stipulation agree that for six months following the date of a Commission final order upholding a price list addition or modification they will not challenge that order at the Commission. The Joint Respondents argued (Joint Response, page 6) that, as a result of this provision, the OCC and the Staff could not challenge the price of a particular service for at least six months after a price list filing.

b. Commission Decision

The Commission believes that a careful reading of the Stipulation does not support the Joint Respondents' contention. The Stipulation only precludes the Staff and the OCC from challenging a new price for six months after it has been approved by the Commission. Prior to Commission approval, either the Staff or the OCC may raise the question as to whether the proposed price is above the floor. We find that these provision are appropriate.

¹³ Transcript January 14, 1999, page 89.

**6. Price Changes Between Ceilings And Floors
(Section III.A.5.a & b.)**

The Stipulation also describes how prices are to be changed between ceilings and floors. These processes and procedures were unopposed by the Joint Respondents. Therefore, the Commission simply notes its agreement with these provisions.

G. Deaveraging (Section III.A.5.c.)

1. Introduction

a. In this section of the Stipulation the issue is whether the Commission should accept the proposal that:

Nothing in this Stipulation shall be construed as either granting or denying USWC authority to geographically deaverage rates or prices. During the term of this plan, US WEST may apply to the Commission for permission to establish a distinct price for each service provided in a specified geographic area.

2. Joint Respondents

The Commission will consider two requests of the Joint Respondents relating to this provision and the issue of deaveraging in general. First, on page twenty of the Joint Response, the Joint Respondents recommend that we deny USWC the ability to deaverage under the terms of the Stipulation. Second, if the Commission does allow USWC the ability to deaverage, the Joint Respondents request that the Commission modify the Stipulation to incorporate a requirement that USWC impute its cost reductions into the prices USWC charges the CLECs for UNEs. Otherwise, according to the Joint Respondents,

their ability to employ UNEs will be diminished. Specifically, the Joint Respondents contend that, since the Stipulation does not require USWC to impute its cost reductions in prices for UNEs, CLECs would be precluded from matching or beating USWC's targeted price decreases by providing service through UNEs purchased from USWC. The Joint Respondents claim that, unless the Stipulation is modified, the pricing flexibility provision in the proposed Stipulation will curb the entry of new providers. Joint Response, pages 9-10.

3. Commission Decision

a. The Commission understands the Joint Respondents' concern with USWC's potential ability, under the terms of the Stipulation, to deaverage its retail rates in general and rates to large business customers in particular.

b. There are broad public interest concerns which accompany the general issue of rate deaveraging. For example, without an effectively competitive market, deaveraging may result in several negative consequences such as an inefficient pricing structure (prices greater than costs), the "dumping" of a disproportionate share of joint and common costs on captive customers, and the potential for cross-subsidy and predatory pricing. However, under the terms of the Stipulation, any future USWC tariff/price list proposal would require Commission approval. Accordingly, the Commission will be able

to take into account any potential negative impacts from any proposed deaveraging in making its decision. Therefore, we deny the request of the Joint Respondents and will not modify the Agreement to deny USWC the ability to propose deaveraged rates in the future.

c. With regard to the second request of the Joint Respondents, that the Commission modify the Stipulation to incorporate a requirement that USWC impute its cost reductions into the prices it charges the CLECs for UNEs, the Commission reiterates its belief that the Commission's costing and pricing and imputation rules will serve to protect the CLECs from abuses of market power by the Company. Therefore, we deny this request.

H. Contracting Flexibility (Section III.B)

1. Introduction

Section III.B of the Stipulation addresses the issue of contracting. The basic question is what limitations, if any, should be imposed on USWC's contracting flexibility. Generally, the Stipulation will grant USWC contracting flexibility "consistent" with the flexibility afforded to the CLECs by 4 CCR 723-38-3.2.2.4. Further, the Stipulation (pages 11-13) recommends eight categories of conditions to be imposed on the Company's contracting flexibility.

2. Joint Respondents

a. The Joint Respondents claim that the Stipulation provides USWC with contracting flexibility "equivalent" to what is presently offered for CLECs. They contend that such contracting flexibility is not supported by the record and will harm the growth of competition. Joint Response, page 12. They also contend that the contracting provisions of the Stipulation permit USWC to deaverage its prices. Joint Response, page 18. Consequently, the Joint Respondents request that the Commission impose several additional limitations on USWC's contracting flexibility. First, the Joint Respondents contend that USWC should seek prior approval of its contracts by submitting redacted, unexecuted versions of the contracts to the Commission. Secondly, the Joint Respondents argue that USWC should file a statement setting forth the TSLRIC floor for each regulated service offering within the contract. Thirdly, the Joint Respondents ask the Commission to modify the Stipulation to include a limitation on the duration and penalty (for early termination) provisions allowed in USWC contracts. Lastly, the Joint Respondents again recommend that the Commission deny USWC the ability to deaverage rates. Joint Response, pages 16-20.

b. According to the Joint Respondents' witness Gillan, there are several problems with the Stipulation's

language addressing price floors for individual customer contracts. Mr. Gillan contends that the Stipulation's reference (page 12) to an undefined customer-specific "TSLRIC" is an open invitation to discrimination. He claims that allowing USWC to establish prices based on an after-the-fact rationalization to a customer-specific TSLRIC would create a "regulatory quagmire of unprecedented dimension." Gillan Testimony, page 15. Mr. Gillan asks the Commission to modify the Stipulation to strike any reference to the use of "customer-specific" TSLRICs by the Company.

3. Commission Decision

a. All the parties to this docket agreed that the market for large business customers is the market segment where competition is emerging the fastest. It is true that USWC still has most of this market. However, large business customers have alternatives and are probably well aware of them. Therefore, the Commission accepts the arguments of the signatories to the Stipulation that there is good reason to believe that the contracting flexibility granted to USWC is consistent with promoting more competition in the market for large business customers, and is, therefore, in the public interest.

b. We also agree with the view that USWC should be able to respond to CLEC competition for large business

customers. Otherwise, USWC may lose large business customers based on regulatory constraints, instead of the real cost efficiencies of the CLECs. The contracting flexibility granted to USWC by the Stipulation is consistent with this position. Furthermore, USWC's contracting flexibility will be conditioned upon its offering contracts on a non-discriminatory basis within Commission determined price ceilings and floors. The Stipulation also allows the Commission to suspend and investigate any specific contract.

c. Therefore, the Commission denies the requests by the Joint Respondents for additional limitations on USWC's contracting flexibility. However, the Commission finds that some minor modifications are called for. Specifically, the Commission finds that any contractual provision relating to penalties for early termination of a USWC contract should be added to the confidential information to be attached by USWC to the notice of contract specified in Section III.B.5, pages 11-12 of the Stipulation. The Commission also finds that the provisions of Section III.B.7 pages 12-13 of the Stipulation, should be modified to require USWC to provide a copy of each complete contract to the Commission.

I. Packaging/Bundling (Section III.C.)

1. Introduction

This section of the Stipulation addresses the issue of packaging and bundling. The basic issue is how should packaging/bundling be handled for USWC. The Stipulation essentially treats the Company the same as the CLECs with the added constraints that the price USWC sets for the bundle or package shall be at the price ceiling (which is set at the sum of the price ceilings for the services within the bundle or package) or between the price ceiling and the appropriate price floor (which is set at the sum of the price floors for the services within the bundle or package). The Stipulation also provides that:

1. With any bundle or package, USWC will either satisfy the bill itemization requirements in Rule 4 CCR 723-2-10 or request a waiver of those requirements.
2. The Commission may suspend and investigate any tariff, price list, or price filed; USWC shall have both the burden of going forward and the burden of persuasion in any such investigation.
3. At any time, any person may protest a proposed price list addition or modification, or may file a complaint asking the Commission to determine if a price charged by USWC for the bundle or package of services is beneath the appropriate floor.

2. Joint Respondents

The Joint Respondents complain that the packaging and bundling provisions of the Stipulation will result in anti-competitive behavior by USWC. They suggest that we require USWC

to seek prior Commission approval of all bundled and packaged offerings. Joint Response, pages 10-11.

3. Commission Decision

The Commission is satisfied with the Stipulation's treatment of the packaging and bundling issue. In particular, the Stipulation allows the Commission to suspend and investigate any price, permits any person to protest any proposed price list addition or modification, and allows persons to file a complaint to determine if a price charged by USWC for any bundle or package of services is beneath the appropriate floor. These provisions will safeguard the public interest. Competition should work here to provide Colorado consumers with more choices, and under Commission rules, Colorado consumers will still have the option of purchasing existing services separately.¹⁴ Therefore, the Commission denies the request of the Joint Respondents, and will not require USWC to seek prior Commission approval of bundled and packaged offerings.

J. Cost Support (Section III.D)

1. Introduction

This section of the Stipulation concerns the issue of cost support. Specifically, the issue concerns what type of cost support must USWC provide when it files a revised price list to change a price, add a new regulated retail

service, or propose a change to a price ceiling. On pages 14 and 15, the Stipulation describes the cost support agreed to by the parties.

2. Joint Respondents

The Joint Respondents complain:

U S WEST does offer up an 'estimate' of TSLRIC for seventeen or so of its retail services after its prices have been in place for half a year. In light of the fact that Brian Johnson testified that US WEST sought pricing flexibility for 'thousands' of retail services, producing estimated TSLRICs 'per unit' that do not require updating any sooner than three years--and producing them only after the services have been offered to customers--the Stipulation is, at the heart, setting speculative price floors for a few services at best.

Joint Response, page 6. The Joint Respondents ask the Commission to modify the Stipulation to require USWC to establish price floors for the services contained in the price list before it implements any pricing flexibility through such lists or any contracts. Joint Response, page 8.¹⁵

3. Commission Decision

a. The Joint Respondents' reference to "seventeen or so" services refers to the list contained in Attachment B to the Stipulation (although that list actually contains nineteen items). Each of these items, however, is

¹⁴ Rule 57 of 4 CCR 723-1.

¹⁵ The request of the Joint Respondents for the prior establishment of price floors was discussed earlier in this order. However, it appears again

actually a category of services into which many rate elements fall. Taken together, these categories represent the major services which USWC offers. Therefore, the comparison between "seventeen or so" and "thousands" is misleading. Moreover, the Stipulation's requirement that the cost studies in use be no more than three years old is consistent with our current Costing and Pricing Rules. See Rule 4 CCR 723-30-4(1) (h).

b. The Joint Respondents' request to modify the Stipulation to require USWC to establish price floors for the services contained in the price list before it implements any pricing flexibility through such lists or any contracts is, as noted above, denied. The Commission supports the Stipulation's provision (Section III.D.) regarding the type of cost support USWC must provide when it files a revised price list to change a price, add a new regulated retail service, or propose a change to a price ceiling.

K. Service Quality Plan

1. Stipulation (Section III.E.1)

The Stipulation provides for prospective, automatic remedies for noncompliance by USWC with specific service quality measures outlined in Attachment A to the Agreement. It also establishes an overall maximum "at risk"

here because the Joint Respondents requested this relief separately to deal with the issue of contracts.

incentive of \$15 million of bill credits per year, disaggregated into maximums for each measure. Noncompliant performance in any measure by USWC for two consecutive months, or any three months throughout the year, as a minimum, will cause the accumulation of a pro-rated bill credit for any and all months during the year in which noncompliant performance is observed. Furthermore, procedures for implementing the bill credits are outlined. Finally, the Stipulation proposes that any credits relating to carrier-to-carrier service quality measures ordered to be included in Attachment A shall be capped at \$2 million annually. The \$2 million cap will, in turn, include the \$900,000 associated with network reliability, switching, trunking, and toll network calling as referenced in Attachment A.

2. Joint Respondents

The Joint Respondents are, in general, favorably disposed to the service quality component of the Stipulation; their only reservation relates to the treatment of carrier-to-carrier service quality measures. They claim that the Agreement is deficient in terms of the requirements concerning the quality of service to other carriers and that the \$2 million cap is inappropriate. Furthermore, they contend that USWC will be able to forestall competitive losses simply by providing poor quality service with respect to facilities essential to its competitors

and then pay less in credits than it would have otherwise lost to competition. As a result, the Joint Respondents request that the Commission modify the Stipulation to incorporate complete compliance with any standards and measures adopted in Docket No. 97R-153T, and to remove the \$2 million cap. To accomplish this goal, Mr. Gillan proposed specific language to insert into the Stipulation to clarify that the \$2 million cap does not represent an overall limit on USWC's financial exposure for violating carrier-to-carrier service quality measures.

3. Commission Decision

We find that the Commission must continue to monitor USWC's service quality closely during this transition period in telecommunications, because high service quality is of great importance to USWC's customers, and because the market may not yet be competitive enough to ensure such high quality on its own. The Commission finds that the service quality portion of the Stipulation provides adequate scrutiny of USWC's performance through the Agreement's service quality standards, reporting requirements, and bill credits for failure to comply. Concerning the Joint Respondents' complaint, the Commission does not deem it necessary to amend the language of the Stipulation, but we clarify that the Agreement does not limit the total credits which may be required from USWC for violating carrier-to-carrier service quality measures forthcoming from Docket No.

97R-153T. Finally, page 19 of the Stipulation, contains references to the signatories requesting "arbitration" by the Commission. As clarification, the Commission interprets "arbitration" as referring simply to the ordinary process by which parties petition the Commission to resolve disputes pursuant to the Commission's Rules of Practice and Procedure, 4 CCR 723-1.

L. Docket No. 90A-665T

1. Stipulation (Section III.E.2)

USWC agrees to increase its sharing amount in Docket No. 90A-665T by \$2.5 million, from approximately \$12 million to approximately \$14.5 million, thus resolving any remaining issues in this docket.

2. Commission Decision

The Commission finds this proposal, which elicited no opposition, to be beneficial to USWC customers and, therefore, should be adopted.

M. Other Issues

1. Issues and Signatories' Positions

There are three miscellaneous issues on which the Stipulation is silent, but which must be addressed in order to fully specify the new regulatory plan for USWC, namely: which services are affected by this regulatory plan; how should promotional offerings be handled; and should there be a mid-term

review of the plan. In response to Commission questions concerning these issues, the signatories answered the first by indicating that the plan should apply to all regulated retail services in USWC's tariff; Exhibit 59, according to USWC, Staff, and the OCC, provides a basic list of such services at the present. Regarding promotional offerings, the Stipulation is silent because the signatories do not intend that the current treatment be altered, or that any changes to that treatment which may occur as the result of pending or future advice letters be affected. Finally, no mid-term review is proposed by the signatories.

2. Commission Decision

The Commission agrees with the signatories' positions on these issues. Exhibit 59 apparently includes USWC's current offerings of regulated retail services; none would be adversely affected by the possibility of downward price flexibility. The Commission realizes, however, that this list may change over the course of the plan as USWC offers new regulated retail services, and discontinues existing ones or has them deregulated. Concerning promotional offerings, the Commission sees no reason to alter, in this docket, the way in which such offerings are presently handled, as outlined in Section 2.2.11.B, Sheet 31 of USWC's Exchange and Network Services Tariff. Finally, the Commission also finds no

compelling reason for establishing a formal mid-term review process for the plan. While we acknowledge that telecommunications is in a period of transition and that regulation needs to monitor these changes closely, the Commission can do so by analyzing the information which will be provided by telecommunications carriers as the result of the forthcoming rulemaking referenced here, and by responding to problems if and when they appear.

N. Rate Modifications, Foregone Rate Increases, and Capital Investment

1. Stipulation (Section IV) and Amendment to the Stipulation

a. Section IV of the Stipulation sets forth a series of rate and revenue reductions which total \$84 million. These include:

(1) A change in USWC's toll and switched access rates resulting in a \$12 million revenue reduction for each category;¹⁶

(2) USWC's agreement to forego recovery of the \$12 million revenue impact associated with implementing the 303/720 rate center consolidation;

(3) USWC's agreement to forego recovery of the \$8 million revenue impact associated with implementing rate

¹⁶ USWC has implemented this in Docket No. 98L-608T. See, Decision No. C98-1325, dated December 30, 1998.

center consolidation and/or expanded area service outside of the 303/720 area codes;

(4) a \$14 million bill credit to offset the charge to residential basic local exchange customers associated with the High Cost Support Mechanism ("HCSM");

(5) an \$8 million bill credit to offset the charge to business basic local exchange customers associated with the HCSM;

(6) USWC's agreement to forego recovery of up to an \$8 million revenue requirement associated with investments and expenses incurred to implement long-term local number portability (LNP); and,

(7) USWC's agreement to invest \$40 million to implement an expanded definition of basic service without recovering the \$10 million revenue requirement associated with this investment.

b. The Amendment to the Stipulation, on the other hand, contains the following provisions:

(1) Upon receipt of support from the HCSM, USWC will use one-third of this support each for the reduction of toll, switched access, and selected business basic exchange rates;

(2) After the reductions in switched access rates proposed elsewhere in the Stipulation and the Amendment,

these rates may not be increased except through an advice letter with 30-day notice;

(3) Anyone may recommend other changes to switched access rates during the plan;

(4) USWC shall file interim switched access tariffs which result in a \$12 million revenue reduction;¹⁷

(5) USWC shall file permanent switched access tariffs slightly later;

(6) If the Commission suspends the permanent tariffs, the signatories agree to propose a particular, expedited schedule for the docket; and,

(7) Staff and the OCC agree not to oppose the way in which USWC implements toll rate reductions required by the Stipulation so long as USWC complies with the Agreement's pricing provisions.

2. Joint Respondents

a. Most of the above provisions were uncontested. The Joint Respondents challenged only the bill credits offsetting USWC's charges to basic local exchange customers associated with the HCSM, and the treatment of the revenue requirement related to investments and expenses incurred to implement long-term LNP. Concerning the HCSM, the Joint Respondents argue that USWC is able to offset its customers'

charges from overearnings which it has generated from all of its customers, including the CLECs. The CLECs, on the other hand, are forced either to set higher prices for the HCSM, implement surcharges, or absorb the costs themselves. They see this situation as giving USWC an unfair competitive advantage on the grounds that it is neither nondiscriminatory nor competitively neutral. In their Joint Response, they propose that this inequity be addressed by requiring USWC to deposit some or all of its overearnings in the HCSM so that all carriers' customers can receive a line item reduction, not just USWC's. On the other hand, Mr. Gillan makes a somewhat different suggestion to address the same situation. He argues that, if USWC can afford to offset its customers' contributions to the HCSM by \$22 million, its share of that fund should be reduced by that amount. The result of adopting this suggestion would be that the amount collected from all carriers' customers would decline by \$22 million.

b. Turning to the LNP issue, the Joint Respondents interpret the Stipulation as giving USWC the right to recover any revenue requirement in excess of \$8 million associated with investments and expenses incurred for the implementation of LNP. They contend that USWC could not obtain this right in either the LNP proceeding, Docket No. 96S-250T, or

¹⁷ USWC has implemented this. See, footnote 13.

the Interconnection Cost Mechanism case, Docket No. 96A-011T, and that this provision violates the Federal Communications Commission's cost recovery authority over long-term LNP and state and federal requirements for competitive neutrality. Consequently, the Joint Respondents recommend that the long-term LNP provision be deleted from the Stipulation.

3. Commission Decision

a. The Commission finds that this portion of the Stipulation, together with the Amendment, should be adopted with only minor clarification as discussed here. Since the telecommunications market in Colorado is in the process of moving toward greater competition, the need for a number of additional expenditures by USWC arises in order to facilitate that transition. The Commission believes that this part of the Stipulation and the Amendment provide the opportunity for these expenditures to be made and the resulting benefits to be realized, without the rate increases which USWC customers would otherwise have to bear. This attention to rate stability will be particularly beneficial to USWC's residential and small business customers who will most likely enjoy the fewest number of competitive alternatives. The Commission also finds that USWC's customers gain from the fact that the benefits of these expenditures will be spread over many classes of customers and many areas of the state. Finally, even if similar savings were

achieved through some other process, the Stipulation provides a mechanism through which the gains begin to accrue to USWC's customers immediately.

b. The Commission does not find either of the Joint Respondents' arguments persuasive. Concerning the HCSM issue, the Commission views the CLECs as having the same options as USWC. Specifically, the CLECs can either absorb the costs themselves or pass those costs on to their customers. Consequently, the Stipulation gives no particular competitive advantage to USWC.

c. As for the suggestion that USWC simply reduce its share of HCSM funds in order to benefit all customers, including those of the CLECs, we note: such an allocation of benefits would be inappropriate. USWC's entitlement to HCSM funds will be calculated according to existing Commission rules. Moreover, USWC's agreement to offset HCSM charges to its basic exchange customers (in an amount totaling \$22 million) is made in light of its own operations (e.g., accounting for USWC's revenues from the provision of services to its own customers). As such, any benefits resulting from USWC's agreement to forego rate increases (*i.e.*, the \$22 million HCSM offset) are properly assigned to USWC customers only. With respect to the LNP issue, the Commission notes that the Stipulation (page 24) only indicates that USWC "may seek"

recovery of any investments and expenses in excess of \$8 million, not that it will necessarily be granted this recovery. Since the Commission retains the authority to make that decision, we do not agree with the Joint Respondents that the LNP portion of the Stipulation provides USWC with a windfall gain, and, hence, should be deleted.

d. While the Commission accepts Section IV of the Stipulation and the entire Amendment as being in the public interest, we do so with certain clarification: on page 22, line 7 of the Stipulation, the reference to "price" for business basic local exchange service should be interpreted to mean "price ceiling". Only if the price ceiling is lowered will USWC customers be certain of realizing benefits from this reduction throughout the rest of the plan. Relying upon similar reasoning, the Commission will interpret "tariffed rates for toll service and switched access service" (page 23, lines 4-5) to mean "price ceiling for toll service and price¹⁸ for switched access service," and "price" for business basic local exchange service on page 23, last line, to mean "price ceiling". Finally, on page 26, line 6, the Commission interprets "basic local exchange service customers" to mean "business basic local

¹⁸ This reference is not changed to "price ceiling" for switched access service because price ceilings are only being established here for retail services; switched access is not a retail service.

exchange service customers" in order to make this reference compatible with that found on page 25, line 8.

O. Miscellaneous Issues

1. Stipulation (Section V)

a. Section V of the Stipulation discusses a series of miscellaneous issues related to the price and service quality plan presented in Section III. These include:

(1) USWC will be exempt from rate of return regulation and any phase I rate case for the duration of the plan.

(2) USWC will use an 11.25% return on equity whenever costs are at issue and 12% for financial reporting purposes.

(3) The plan will be in effect for at least five years and, at the end of the fourth year, USWC will file a report indicating whether it believes the plan should be extended beyond the end of the fifth year.

(4) The Commission should initiate a rulemaking docket to determine what information all jurisdictional telecommunications providers should be required to submit concerning competition in Colorado.

(5) USWC will be required to continue to provide reports ordered by the Commission, to continue to use

Part 32 accounting, and to file reports related to the service quality component of the plan.

(6) All parties retain the right to recommend changes to the Commission's rules during the plan.

b. In addition to these issues, the signatories, in responding to a Commission question, agreed that the plan may be terminated before the end of five years. This could occur as a result of either a nonsignatory filing a complaint or the Commission initiating a show cause proceeding.

2. Commission Decision

a. These positions were uncontested and the Commission finds Section V of the Stipulation to be in the public interest. In particular, the Commission realizes that telecommunications markets are gradually becoming more competitive and we intend to facilitate this emergence of competition whenever possible. Allowing greater earnings flexibility for USWC (e.g., by relaxing traditional rate of return regulation) will help to encourage it to provide an expanding array of affordable, high quality services to its customers.

b. Concerning the return on equity, USWC customers will benefit from the lower rate of 11.25% since it is the one used in USWC cost studies. These same customers will benefit as well from the higher rate of 12% for financial

reporting purposes, since USWC will be able to use it to attract capital. In addition, it is this rate that is used to calculate the composite debt/equity rate of 10.11% that is, in turn, the basis for the determination of the interest accruing to USWC customers as the result of a number of the rate modifications in Section IV of the Stipulation.

c. The Commission approves of the length of the plan. It is sufficient to allow us to determine whether this new regulatory scheme is performing as intended, and whether the outcomes are beneficial to USWC, its customers, and the telecommunications sector in Colorado in general. Furthermore, this term is acceptable since there are mechanisms in place to terminate the plan before the end of five years if unintended, negative consequences arise.

d. Finally, the Commission realizes that emerging competition brings with it unavoidable uncertainty as to the precise nature of the Colorado telecommunications markets in the future. Monitoring this evolution of the relevant markets is an important role for regulators. Therefore, we will establish a rulemaking docket to formalize the monitoring processes suggested in the Stipulation.

P. Rule Waivers

1. Stipulation (Section VI.F)

a. The Stipulation indicates that the signatories agree to the waiver of any rule for USWC to the extent such a waiver is necessary in order to implement the Agreement. In response to a question from the Commission, the signatories elaborated that no waivers are necessary for any rule other than Rule 4 CCR 723-30, and the waivers can be limited to those currently in effect in Docket No. 95A-363T and Rules 30-4.1(a) and 30-6.1(a).

2. Commission Decision

The Commission agrees with the signatories on this matter. The initial waivers for USWC from Rule 4 CCR 723-30 are discussed in Decision No. R95-1219, dated December 8, 1995, Docket No. 95A-363T. These were recently amended by Decision No. C99-13, dated January 6, 1999. The Commission has reviewed these waivers periodically over the last three years and has found them to be in the public interest; no reason exists to reach a contrary conclusion at this time. Rules 4 CCR 723-30-4.1(a) and 30-6.1(a) articulate the requirement that TSLRIC studies accompany every rate filing by USWC. Since the Commission agrees here that this is no longer necessary, granting a waiver from these rules is in order as well.

Q. State Action Antitrust Defense

1. The Joint Respondents, through the testimony of Mr. Gillan, finally suggest that we adopt a statement clarifying

that Commission approval of the Stipulation is not intended to grant State action immunity to USWC from operation of State and Federal antitrust laws. Indeed, Mr. Gillan suggests that we adopt a statement acknowledging that the Commission, in approving the Stipulation, does not engage in "active supervision" of USWC for purposes of any future antitrust actions against the Company. We decline to adopt these suggestions.

2. Whether USWC will be able to assert a "State action" defense in a future (and as yet unknown) antitrust lawsuit based upon Commission decisions associated with approval and implementation of the Stipulation is a matter for a court to decide in that lawsuit. No purpose would be served by our issuing a completely speculative statement on this matter at this time. As such, the Joint Respondents' request will be denied.

R. Pending Motions

At prior Weekly Meetings, the Commission orally granted various motions filed in this case. This order will serve to now record those rulings: The Motion to Strike Supplemental Answer Testimony of William Page Montgomery filed by USWC on May 1, 1998 is granted; the Motion by the OCC to Present Rebuttal Testimony filed on May 15, 1998 is granted; the Motion to Strike Comments on Stipulation of the United States

Department of Defense and all other Federal Executive Agencies filed by USWC on January 8, 1999 is granted; and the Joint Motion to Strike Portions of the Testimony of Joseph Gillan filed by USWC, Staff, and the OCC on January 12, 1999 is granted.

II. ORDER

A. The Commission Orders That:

1. The Stipulation and Settlement Agreement filed by U S WEST Communications, Inc., Commission Staff, and the Colorado Office of Consumer Counsel on October 29, 1998, and the Amendment to Stipulation and Settlement Agreement filed by those parties on November 23, 1998 are hereby adopted in full resolution of this proceeding consistent with the above discussion. Copies of the Stipulation and Settlement Agreement and the Amendment are attached to this order.

2. The Motion to Strike Supplemental Answer Testimony of William Page Montgomery filed by USWC on May 1, 1998; the Motion by the OCC to Present Rebuttal Testimony filed on May 15, 1998; the Motion to Strike Comments on Stipulation of the United States Department of Defense and all other Federal Executive Agencies filed by USWC on January 8, 1999; and the Joint Motion to Strike Portions of the Testimony of Joseph

Gillan filed by USWC, Staff, and the OCC on January 12, 1999 are granted.

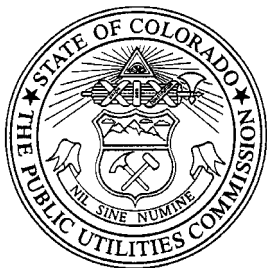
3. The twenty-day period provided for in § 40-6-114(1), C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the Mailed Date of this decision.

4. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' DELIBERATIONS MEETING
February 2, 1999.**

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO



ROBERT J. HIX

VINCENT MAJKOWSKI

ATTEST: A TRUE COPY

Bruce N. Smith
Director

Commissioners
COMMISSIONER R. BRENT ALDERFER
NOT PARTICIPATING, TERM EXPIRED.

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO**

* * *

IN THE MATTER OF THE) APPLICATION OF U S WEST) COMMUNICATIONS, INC.) FOR SPECIFIC FORMS OF) PRICE REGULATION))	DOCKET NO. 97A-540T
--	---	---------------------

THE APPLICATION OF THE MOUNTAIN) STATES TELEPHONE AND TELEGRAPH) COMPANY DOING BUSINESS AS U S WEST) COMMUNICATIONS, INC., FOR APPROVAL) OF A FIVE YEAR PLAN FOR RATE AND) SERVICE REGULATION AND FOR A) SHARED EARNINGS PROGRAM))	DOCKET NO. 90A-665T
--	---	---------------------

STIPULATION AND SETTLEMENT AGREEMENT

U S WEST Communications, Inc. ("U S WEST" or "Company"), the Staff of the Colorado Public Utilities Commission ("Staff"), and the Colorado Office of Consumer Counsel ("OCC"), collectively referred to as the "Parties," hereby state that they have resolved by settlement all issues relevant to the Company's price regulation application and other dockets that have or could have been contested in the above captioned proceedings as among the Parties. The Parties respectfully submit this Stipulation and Settlement Agreement ("Stipulation" or "Agreement") for approval by the Colorado Public Utilities Commission (the "Commission"), pursuant to Rule 83(a) of the Commission Rules of Practice and Procedure.

I. RECITALS

A. On October 31, 1997, U S WEST filed its Application for Specific Forms of Price Regulation. Staff and OCC intervened in the case, as did the Colorado Telecommunications Association (“CTA”), MCI Telecommunications Corporation (“MCI”), the United States Department of Defense and all other Federal Executive Agencies (“DOD/FEA”), ICG Telecom Group, Inc. (“ICG”), WorldCom, Inc. (“WorldCom”), TCG Colorado (“TCG”) and AT&T Communications of the Mountain States, Inc. (“AT&T”). AT&T subsequently withdrew its intervention. Testimony was filed and the matter was heard by the Commission on May 28, 1998 through June 4, 1998, and June 24 – 25, 1998.

B. In its direct case, U S WEST proposed what it believed was an appropriate form of price regulation for its retail services. The Company’s testimony and exhibits articulated the rationale for and alleged benefits of its proposed price regulation plan. Staff, OCC and various intervenors challenged the Company’s proposal as unwarranted. Staff and OCC each proposed alternative price regulation plans for the Commission’s consideration.

C. Since the conclusion of hearings in this matter, the Parties have engaged in extensive settlement discussions in an attempt to resolve their differences regarding the various issues raised in this proceeding and in certain other proceedings currently pending before the Commission and on judicial review. This Agreement reflects the results of those negotiations and resolves all of the issues which were or could have been contested among the Parties to this Agreement in the following matters:

Docket No. 97A-540T, In The Matter of The Application of U S WEST Communications, Inc. For Specific Forms of Price Regulation;

Docket No. 98A-338T, Rate Center Consolidation Cost Recovery;

Rate Center Consolidation Judicial Review Actions (Cases No. 98 CV 5934 and 98 CV 5931);

Docket No. 90A-665T, AFOR earnings sharing for 1997; and

Interconnection Cost Adjustment Mechanism Appeals, but only to the extent that such appeals include claims to recover costs associated with local number portability through surcharges on residential and business basic local exchange customers (Cases No. 98 CV 3532 and 98 D 934).

D. This Agreement also addresses and resolves Staff's and OCC's concerns relating to U S WEST's current reported earnings level by requiring U S WEST to implement revenue reductions totaling \$84 million. These reductions include (1) a \$14 million bill credit to offset the surcharge required to be paid by residential basic local exchange customers in connection with the Colorado High Cost Support Mechanism ("HCSM"); (2) an \$8 million bill credit to offset the surcharge required to be paid by business basic local exchange customers in connection with the HCSM; (3) U S WEST's agreement to forego recovery of the \$12 million revenue requirement associated with implementing rate center consolidation in the 303 and 720 area codes; (4) U S WEST's agreement to forego recovery of the \$8 million revenue requirement associated with implementing rate center consolidation in the 970 and 719 area codes; (5) U S WEST's agreement to forego recovery of the first \$8 million revenue requirement associated with investment and expense incurred to implement long-term local number portability; (6) U S WEST's agreement to reduce by \$24 million the tariffed rates for toll and switched access services; and (7)

U S WEST's agreement to invest \$40 million to expand the capability of basic local exchange service and to forego recovery of \$10 million revenue requirement associated with that investment.

E. Lastly, this Agreement provides prospectively for automatic remedies for non-compliance with specific measures set forth in the Service Quality Plan, Section III. E., and Attachment A to the Agreement.

F. The Parties have reached a mutually acceptable proposal which they believe to be in the public interest, consistent with the following analysis of state statutes and Commission rules:

1. In 1987, the General Assembly took the first step towards promoting competition in the local telecommunications market declaring, in relevant part, as follows:

The general assembly hereby finds, determines, and declares that it is the policy of the state of Colorado to promote a competitive telecommunications marketplace while protecting and maintaining the wide availability of high-quality telecommunications services. Such goals are best achieved by legislation that brings telecommunications regulation into the modern era by guaranteeing the affordability of basic telephone service while fostering free market competition within the telecommunications industry. . . . However, the general assembly recognizes that the strength of competitive force varies widely between markets and products and services. Therefore, to foster, encourage and accelerate the continuing emergence of a competitive telecommunications environment, the general assembly declares that flexible regulatory treatments are appropriate for different telecommunications services.

2. In 1995, the General Assembly enacted H.B. 1335, codified at Colo. Rev. Stat. § 40-15-501 *et seq.*, which opened the market for basic local

exchange service to competition. Among the policies the legislature sought to advance through H.B 1335 were those enunciated in § 40-15-501(1) C.R.S.:

The General Assembly hereby finds, determines, and declares that competition in the market for basic local exchange service will increase the choices available to customers and reduce the costs of such service. Accordingly, it is the policy of the State of Colorado to encourage competition in this market and strive to ensure that all consumers benefit from such increased competition. The commission is encouraged, where competition is not immediately possible, to utilize other interim marketplace mechanisms wherever possible, with the ultimate goal of replacing the regulatory framework established in Part 2 of this Article with a fully competitive telecommunications marketplace statewide as contemplated in this Part 5.

3. Section 40-15-502 C.R.S. set forth further specific expressions of state policy to be considered by the Commission in moving to a more competitive telecommunications environment. As relevant here, the General Assembly defined basic service as “the availability of high quality, minimum elements of telecommunications services . . . at just, reasonable and affordable rates” and directed the Commission to “require the furtherance of universal basic service, toward the ultimate goal that basic service be available and affordable to all citizens of the state of Colorado.” § 40-15-502(2) & (3), C.R.S.

4. Finally, pertinent here, section 40-15-503(2)(c), C.R.S., directs the Commission to consider changing to forms of price regulation for any telecommunications provider that provides services regulated under Part 2 or 3 of Article 40:

(c)(I) The commission shall consider changing to forms of price regulation other than rate-of-return regulation for any telecommunications provider that provides services regulated under part 2 or 3 of this article and shall consider the conditions under which such a change may take place to ensure that

telecommunications services continue to be available to all consumers in the state at fair, just, and reasonable rates. This paragraph (c) shall not be construed to limit the manner and methods of regulation available under section 40-15-302.

(II) As used in this paragraph (c), “price regulation” means a form of regulation that may contain, without limitation, any of the following elements:

- (A) Regulation of the price and quality of services;
- (B) Price floors and price ceilings;
- (C) Flexibility in pricing between price floors and price ceilings;
- (D) Modified tariff requirements;
- (E) Incentives for increased efficiency, productivity, and quality of service.

5. Consistent with the directive set forth in § 40-15-503(2)(c), the Commission promulgated rules governing applications for specific forms of price regulation, 4 CCR 723-38. These rules set forth certain specific forms of price regulation the Commission may consider and also preserve the Commission’s discretion to “devise any specific form of price regulation that is, in the Commission’s judgment, in the public interest and appropriate for the applicant’s circumstances.” 4 CCR 723-38-3.1.4. In support of the application, the applicant is required to show that the proposed form of price regulation “is consistent with, and not contrary to, the statements of public policy contained in §§ 40-15-101, 40-15-501, 40-15-502, and 40-15-503,(2)(c), C.R.S.” 4 CCR 723-38-4.1.14.

G. On February 8, 1996, the federal Telecommunications Act of 1996 became law. The purpose of the 1996 Act is to “provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and

information technologies and services to all Americans by opening all telecommunications markets to competition.” *Joint Statement of Managers, S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 1* (1996).

H. The Parties agree that the Price and Service Quality Regulation Plan (the “Plan”) contained in this Agreement is consistent with and will further the public policies set forth above as required by Rule 723-38-4.1.14. In addition, the Plan will promote the goals set forth in the Telecommunications Act of 1996. The Parties agree that, based on the foregoing Recitals, the Plan proposed in this Agreement is an appropriate mechanism for Commission regulation of U S WEST.

WHEREFORE, the Parties agree and stipulate to the following:

II. GENERAL AGREEMENT

The Parties have agreed upon a plan which has two components: (1) a form of price regulation for U S WEST, other than rate of return regulation, as contemplated by § 40-15-503(2)(c), C.R.S., which includes price floors and price ceilings for retail services, the ability to price flexibly between price floors and ceilings, contracting flexibility consistent with the contracting flexibility afforded to Competitive Local Exchange Carriers (“CLECs”) by 4 CCR 723-38-3.2.2.4, and the ability to bundle and package services; and (2) continued service quality regulation based on the Commission’s retail service quality rules, with the addition of specific, automatic remedies for failure to meet the standards specified in the Plan.

III. SPECIFICS OF PRICE AND SERVICE QUALITY PLAN

The Parties agree that the following are the specifics of the Price and Service Quality Plan under which U S WEST will operate for the term of the Plan. The Parties agree that nothing in this Plan is meant to supercede any flexible regulation already granted with respect to specific regulated retail services.

A. Price Floors and Price Ceilings

1. Price Ceilings

For the duration of the plan, and unless modified as specified below, the price of each of U S WEST's regulated retail services will be capped at the Commission-approved tariffed rate for that service as contained in U S WEST's tariffs on the date the Commission approves this Stipulation, as modified appropriately to reflect specific tariffed rate and price reductions discussed below in Section IV, and as later modified to reflect specific tariffed rate and price reductions implemented to offset U S WEST's receipts from the Colorado High Cost Support Mechanism and intrastate receipts from the federal universal service fund, if any, for that service.

The capped price for each service is the "price ceiling" for that service. The tariffs for regulated retail services on file on the date the Commission approves this Stipulation, modified as described above, shall remain in place as evidence of the price ceilings for each service.

2. Changing a Price Ceiling

U S WEST may file, at its discretion, to change the price ceiling for any service except residential and business basic local exchange service (as those services are or may be defined by the Commission). Modifications to price ceilings shall be accomplished through advice letter filings on 30 days notice.

Except as limited below in Section IV. B., if and when additional elements are included in the definition of basic service as a result of review by the Commission under § 40-15-502(2), C.R.S., U S WEST may seek to increase price ceilings for residential and business basic local exchange service as reasonably necessary to cover investment and expenses associated with inclusion of such additional elements.

3. Price Lists

The tariffed rates for U S WEST's regulated retail services, modified as described in Paragraph III. A. 1., shall establish both the price ceiling and the initial "price list." The price list sets forth the *actual price* to be charged for each service. U S WEST shall modify its price list if it initiates a new regulated service by filing an initial tariff establishing the price ceiling and setting forth the terms and conditions for the new service.

4. Price Floors

a. The "price floor" for a regulated retail service will be set at Total Service Long Run Incremental Cost ("TSLRIC") as described in Rule 4 CCR 723-30-2.45 (a) - (d) in effect on the date of the Commission's adoption of this Agreement. This rule is appended as Attachment C to this Agreement.

b. The actual price floor for each regulated retail service will not be formally established at the beginning of the Plan. Rather, at any time, any person may protest a proposed price list addition or modification or may file a complaint asking the Commission to determine if a price is set below the appropriate price floor. U S WEST shall bear the burden of proof that the price it charges is at or above the price floor.

c. For six months following the date of a Commission final order upholding a price list addition or modification, the Parties agree not to challenge that order at the Commission.

5. Pricing Flexibility Between Floors and Ceilings

a. On or before 14 days prior to the desired effective date for a change in one or more of the prices contained in its price list, U S WEST shall file a transmittal letter describing the proposed change[s] and containing its revised price list. Unless suspended by the Commission, the revised price list will become effective according to its terms.

b. The Commission may suspend and investigate any price or price list filed. In a suspension and investigation proceeding, U S WEST shall have both the burden of going forward and the burden of persuasion that any price or price list is just, reasonable, and non-discriminatory.

c. Nothing in this Stipulation shall be construed as either granting or denying U S WEST authority to geographically deaverage rates or prices. During the term of the plan, U S WEST may apply to the Commission for

permission to establish a distinct price for service provided in a specified geographic area.

B. Contracting

1. U S WEST may negotiate and enter into customer-specific contracts, with terms and conditions tailored to the specific customer's needs.

U S WEST shall file a notice of the contract with the Commission prior to the expiration of 14 days after the date the contract is executed. If the Commission does not set the contract for hearing, the contract is effective according to its terms.

2. U S WEST agrees that contracts will be offered on a nondiscriminatory basis and the prices charged under the contract will be within the price ceilings and price floors for each service covered by the contract.

3. The Commission may suspend and investigate any contract. In a suspension and investigation proceeding, U S WEST shall have both the burden of going forward and the burden of persuasion that any contract is just, reasonable, and non-discriminatory.

4. All Parties recommend that the Commission retain U S WEST's notices of contracts in a single file. U S WEST shall sequentially number the notices of contracts filed with the Commission.

5. U S WEST shall attach to the notice of contract the following confidential information: (1) the duration of the contract; (2) the regulated and non-regulated services that are being provided; (3) the price(s) contained in the contract; and (4) the sum of the state-wide average or customer-specific TSLRIC

costs of the regulated and nonregulated services provided under the contract. Notwithstanding the fourth requirement, if the contract includes separate prices for regulated and non-regulated services, U S WEST shall only provide the sum of the TSLRIC costs of the regulated services.

6. U S WEST may substitute the tariff rate as a surrogate TSLRIC if (a) the service is regulated, (b) U S WEST does not have a cost study for the service that identifies its TSLRIC and (c) the service neither generates more than 1 percent of U S WEST's total annual Colorado operating revenue for regulated services nor is identified on Attachment B. Further, U S WEST may substitute the service catalog price as a surrogate TSLRIC if the service is non-regulated.

7. When the notice of contract is provided to the Commission, U S WEST shall contemporaneously provide: (a) a copy of each notice of contract filed with the Commission and (b) the rate/cost comparisons and cost studies that support U S WEST's estimation of the sum of the TSLRIC costs of the services provided under the contract to the Chief of Fixed Utilities and the Director of the OCC. To the extent Staff and OCC have already been provided copies of the required rate/cost comparisons or cost studies, U S WEST may provide a reference to the appropriate document. U S WEST shall provide the rate/cost comparisons and supporting cost studies to Staff and OCC both in hard copy and, where available, electronically. U S WEST shall make a copy of each contract available for review by Staff and OCC at 1801 California Street, Denver, Colorado.

8. Any qualified person who signs a non-disclosure agreement and files that agreement with the Commission may review and copy at 1801 California Street, Denver, Colorado (a) the confidential portion of each notice of contract filed with the Commission and (b) the rate/cost comparisons and cost studies that support U S WEST's estimation of the sum of the TSLRIC costs of the services provided under the contract. Absent U S WEST's written express consent, any person obtaining copies of confidential information under this paragraph shall return such information to U S WEST at such time as the Commission approves, rejects or allows the contract under consideration to go into effect as a matter of law. U S WEST shall make both the hard copies and, where available, electronic copies available for review and copying.

0 Packaging/Bundling

1. U S WEST shall initiate a new service consisting of a bundle or package of services by filing an initial tariff establishing the price ceiling and setting forth the terms and conditions for the new service. Thereafter, U S WEST may change the price for such service by filing a revised price list containing the proposed change on fourteen (14) days notice. With any bundle or package, U S WEST will either satisfy the bill itemization requirements in Rule 4 CCR 723-2-10 or request a waiver of those requirements.

2. The Commission may suspend and investigate any tariff, price list, or price filed. In a suspension and investigation proceeding, U S WEST shall have both the burden of going forward and the burden of persuasion that the tariff, price list, or price is just, reasonable, and non-discriminatory.

3. The price for the bundle or package of services in question shall be at the price ceiling (which is set at the sum of the price ceilings for the services within the bundle or package) or between the price ceiling and the appropriate price floor (which is set at the sum of the price floors for the services within the bundle or package).

4. At any time, any person may protest a proposed price list addition or modification or may file a complaint asking the Commission to determine if a price charged by U S WEST for the bundle or package of services is beneath the appropriate price floor. U S WEST shall bear the burden of proof in any proceeding before the Commission that the price it charges for the bundle or package of services is at or above the price floor.

1 Cost Support

1. Within six months following Commission adoption of the Agreement, U S WEST shall provide Staff and OCC with nonrecurring and recurring rate/cost comparisons and TSLRIC cost studies for the services identified in Attachment B. The rate/cost comparisons shall contain: the USOC, the price, the quantities sold, and an estimate of the per-unit TSLRIC plus shared costs, and shall be updated annually. U S WEST shall update the supporting cost studies as required to ensure that no cost study is more than three years old and shall provide any such updates to Staff and OCC with its annual rate/cost comparisons.

2. At any time following Commission adoption of this Agreement, for the duration of the plan, when U S WEST files a revised price list

to change a price, add a new regulated retail service, or propose a change to a price ceiling, it shall comply with the Costing and Pricing Rules, 4 CCR 723-30. All information provided to Staff under the Costing and Pricing Rules to support revisions to price lists, new regulated services, or changes to price ceilings shall also be provided, simultaneously, to OCC. The cost support contemplated in this paragraph may be retained by Staff and OCC.

3. U S WEST shall make cost support available for review and copying at 1801 California Street, Denver, Colorado, to qualified persons who sign an appropriate non-disclosure agreement and files that agreement with the Commission. Absent U S WEST's written express consent, any person obtaining copies of confidential information under this paragraph shall return such information to U S WEST at such time as the Commission approves, rejects or allows the revised price list under consideration to go into effect as a matter of law.

E. Service Quality Plan

1. Prospective Service Quality Issues

To advance the aim of service quality, U S WEST agrees to the prospective, automatic remedies for non-compliance with the specific measures contained in Attachment A and agrees that the measures quantified in Attachment A are fundamentally consistent with the Commission's service quality rules (4 CCR 723-2) as of the date of execution of the Agreement.

a. The standards and measures included in this Plan are specifically identified in Attachment A to this Agreement. An annual fixed

maximum bill credit incentive adjustment for each measure is established.

U S WEST has continuing responsibility to meet all service quality rules.

b. Non-compliant performance in any measure for two consecutive months, or any three months throughout the year, will cause the accumulation of a pro-rated bill credit for any and all months during the year in which non-compliant performance in the specific measure is observed. A prorated adjustment will be calculated for each month of non-compliance in the measure. (For example, if the company were out of compliance for out-of-service repair in January, March, and December, the company would be charged a 3/12 prorate of the total dollar amount at-risk for out-of-service repair.)

c. Bill Credits will be accumulated and tabulated throughout the year. U S WEST shall make a bill credit compliance filing on or before April 1st of the following year, setting forth its bill credit calculations. U S WEST shall implement the bill credits, as calculated and filed in its April report, beginning June 1st of the year in which the report is filed. At U S WEST's discretion, the total amount of bill credits due shall be applied either in a single month's billing cycle or over a period of months up to the remainder of the year (i.e., June - December). In the event U S WEST chooses to apply the bill credit over a period of months rather than in a single month billing cycle, interest on the bill credit amount shall accrue beginning on June 1 at 10.11% annually. Parties may challenge U S WEST's bill credit calculation. Any challenge to U S WEST's bill credit calculation must be made within 90 days after the filing of the report. In the event there is a dispute related to the calculation of the appropriate bill credit,

the amount that is not in dispute, if any, shall be implemented pursuant to the time lines provided above. A true-up with interest at 10.11% annually will be applied, if necessary, after the dispute has been resolved.

d. Performance results will be reported thirty (30) days after the end of each month and provided to Staff and OCC for review.

U S WEST may request waivers to exclude from calculations of its performance events or situations as provided in Commission rules. In its request for waiver, U S WEST must document and report the time frame and impact of each event and the rationale for excluding it. U S WEST must make requests for waivers, for all measures in Attachment A, except held service orders, throughout the performance year and file such waiver requests within 30 days after the end of the month in which the report was filed. U S WEST must make requests for waivers for held service orders throughout the performance year and must file the request for waiver within 60 days after the end of the month in which the event occurs. Along with the monthly reports identified above, U S WEST will file summary reports documenting its exclusions, including exclusions for events listed in Paragraph e below, that identify U S WEST's service results both considering and excluding the extraordinary or abnormal events. U S WEST will make the supporting documentation for the summary exclusions available for review by Staff and OCC upon request.

e. Notwithstanding the provisions in Paragraph d above, the standards within these service quality measurements establish the minimum acceptable quality of service under normal operating conditions. They do not

establish a level of performance to be achieved during the periods of emergency, catastrophe, natural disaster, severe storm or other events affecting large numbers of customers. Nor shall they apply to extraordinary or abnormal conditions of operation, such as those resulting from work stoppage, civil unrest, or other events for which a provider may not have been expected to accommodate. To the extent such conditions affect the measurement records required under this Agreement and/or the ability of the U S WEST to meet any standard contained within this Agreement, it shall be U S WEST's responsibility to separately document the duration and magnitude or effect of any such occurrences in its records.

f. The total maximum "at-risk" incentive is \$15,000,000 in bill credits per year.

g. U S WEST will work with Staff and OCC to clearly identify what databases and reports are necessary to track the service quality provisions. Any subsequent changes to databases, reports, etc. will cause the measures to be reviewed and may cause them to be modified to assure consistency with the original intent of the Plan.

h. All Parties reserve the right to petition the Commission for changes in the existing service quality rules and related requirements in the rules. If the Commission should change the existing service quality rules or the related measures in the service quality rules specified in Attachment A, the Parties agree to modify Attachment A. Modifications to the service quality plan contemplated in this paragraph are limited to the changes

necessary to align the service quality plan measures with the relevant changes in the Commission's existing service quality rules. Consideration will be given in timing changes in Attachment A to reflect the annual adjustment administration. To the extent the Parties cannot resolve the modification to Attachment A to reach consistency with the rules, the Parties agree to request arbitration by the Commission on the unresolved issue. If changes in Attachment A are required as a result of service quality rule and/or related service quality measure changes, the total bill credit incentive adjustment maximum remains at \$15,000,000 per year.

i. In the event that new carrier-to-carrier service quality rules are adopted by the Commission, the Parties have the right to request a change in this Agreement to allow consistency between the carrier-to-carrier service quality rules and this Agreement. To the extent the Parties cannot resolve the modification to Attachment A to reach consistency with the rules, the Parties agree to request arbitration by the Commission on the unresolved issue. If changes in Attachment A are ordered by the Commission, the total incentive adjustment shall remain \$15,000,000 per year, and any carrier-to-carrier measures ordered to be included in Attachment A shall be capped at \$2,000,000 annually. The \$2,000,000 cap includes the \$900,000 associated with network reliability, switching, trunking, and toll network calling referenced in Attachment A.

j. Any subsequent tariffed rate proceedings will treat the bill credits as "below-the-line" adjustments.

2. Docket No. 90A-665T

U S WEST agrees to increase its sharing amount in Docket No. 90A-665T, by \$2.5 million dollars. This increases the amount to be returned to customers, in bill credit form, from a total of approximately \$12 million to approximately \$14.5 million. U S WEST also agrees to return these additional monies to ratepayers by December 31, 1998. The Parties agree that this Stipulation resolves any remaining issues in Docket No. 90A-665T.

IV. RATE MODIFICATIONS, INVESTMENT, AND RETURN ON EQUITY

The Parties agree that, prior to moving U S WEST from traditional rate of return regulation to price regulation, and in the context of reaching an agreement on the appropriate form of regulation for U S WEST going forward, it would be prudent to evaluate and analyze U S WEST's current authorized rate of return and financial results under that authorized return. Based on the separate analyses conducted by Staff, OCC, and U S WEST, the Parties agree that, in conjunction with settling the price regulation issue, U S WEST shall agree to certain rate modifications; shall agree to forego certain rate increases; shall agree to certain investment obligations; and shall agree to a modified rate of return on equity which may be used in developing cost studies or modeling for the High Cost Support Mechanism. The following are the specifics of these agreements:

A. Rate Modifications and Foregone Rate Increases

1. On January 1, 1999, U S WEST will reduce its tarriffed rates for toll service and switched access service by \$12 million, respectively, for a

total of \$24 million in reductions to toll and switched access services. Once in effect, the \$24 million in reductions will remain in place for the term of the Plan.

2. Pursuant to Decision No. C98-439, in Docket No. 97M-548T, U S WEST will implement rate center consolidation within the 303/720 area codes by January 1, 1999. U S WEST will withdraw its Application for Cost Recovery, Docket No. 98A-338T, and will forego collection of the \$12 million dollars total revenue impact, as calculated by U S WEST, associated with this 303/720 rate center consolidation. U S WEST and OCC both agree to withdraw their appeals of the Commission's decision in Docket No. 97M-548T.

3. Upon Commission order, U S WEST will implement rate center consolidation, Expanded Area Service, or both ("rate center consolidation") outside the 303/720 area codes. U S WEST will file with the Commission no later than January 31, 1999, an application to effectuate the rate center consolidations. The application shall contain recommended rate center consolidations with a total rate impact of \$8 million, with interest, calculated from the date of the final Commission decision approving this Stipulation to the date this paragraph is finally implemented. Interest will accrue at 10.11%. U S WEST will forego recovery of the \$8 million, plus interest. The Commission will determine where the additional rate center consolidation shall take place. Such rate center consolidation shall not be implemented prior to July 1, 1999.

In the event the Commission does not order additional rate center consolidation before January 1, 2001, or the cost of implementing additional rate center consolidation is less than \$8 million U S WEST will lower

the price for business basic local exchange service by the difference between \$8 million and the cost of implementing the Commission-ordered additional rate center consolidation. U S WEST also agrees to pay a one-time bill credit to all business basic local exchange customers in an amount equal to the interest accrued on \$8 million from the date of the final Commission decision approving this Stipulation to the time the price reduction is implemented. Interest shall accrue at 10.11%.

4. If the Commission imposes a charge on residential basic local exchange associated with the High Cost Support Mechanism by January 1, 2000, U S WEST will offset that charge to residential basic exchange service by \$14 million each year. The offset will be shown as a line item reduction on the customer bill. U S WEST also agrees to pay a one-time bill credit to all residential basic local exchange customers in an amount equal to the interest accrued on the \$14 million from the date of the final Commission decision approving this Stipulation to the time the HCSM is implemented. Interest shall accrue at 10.11%.

In the event the Commission does not implement the HCSM, does not impose a charge on residential basic local exchange service by January 1, 2000, or implements a charge on residential basic local exchange service in an amount less than \$14 million, U S WEST will reduce its tariffed rates for toll service and switched access service each by 50 percent (collectively 100 percent) of the difference between \$14 million and the amount charged residential basic local exchange service. U S WEST also agrees to pay a one-

time bill credit to all residential basic local exchange customers in an amount equal to the interest accrued on the \$14 million from the date of the final Commission decision approving this Stipulation to the time the price reduction is implemented. Interest shall accrue at 10.11%.

5. If the Commission imposes a charge on business basic local exchange service associated with the HCSM, by January 1, 2000, U S WEST will offset that charge to business basic local exchange service by \$8 million each year. The offset will be shown as a line item reduction on the customer bill. U S WEST also agrees to pay a one-time bill credit to all business basic local exchange customers in an amount equal to the interest accrued on the \$8 million from the date of the final Commission decision approving this Stipulation to the time the HCSM is implemented. Interest shall accrue at 10.11%.

In the event the Commission does not implement the HCSM, does not impose a charge on business basic local exchange service by January 1, 2000, or implements a charge on business basic local exchange service in an amount less than \$8 million, U S WEST will lower the price for business basic local exchange service by the difference between \$8 million and the amount charged business basic local exchange service customers. U S WEST also agrees to pay a one-time bill credit to all business basic local exchange customers in an amount equal to the interest accrued on \$8 million from the date of the final Commission decision approving this Stipulation to the time the price reduction is implemented. Interest shall accrue at 10.11%.

6. U S WEST agrees to forego assessing any state or federal surcharge in Colorado associated with implementing long-term local number portability (LNP) except as provided below. To the extent that U S WEST's revenue requirement associated with investments, expenses, or other costs of implementing LNP in Colorado exceeds \$8 million, U S WEST may seek recovery of those investments, expenses, or other costs, either through a surcharge or some other method of recovery from other than residential or business basic local exchange service (as then defined in the Commission's rules). U S WEST agrees that it will not seek LNP recovery in the Interconnection Cost Adjustment Mechanism case, Docket No. 96A-011T or through the appeals from that docket (Cases No. 98 CV 5934 and 98 CV 5931) through a surcharge on residential and business basic local exchange service. As a last alternative, U S WEST may seek recovery for amounts exceeding \$8 million dollars from residential and business basic local exchange service if the Federal Communications Commission allows recovery only from basic local exchange service customers.

B. Capital Investment

If additional elements are included in the definition of basic service as a result of Docket No. 98I-213T (the Commission's pending docket under § 40-15-502(2), C.R.S.) and subsequent rulemaking, by January 1, 2000, U S WEST agrees to make investment of \$ 40 million to implement such change and to forego recovery of the \$10 million revenue requirement associated with

that \$40 million investment. U S WEST also agrees to pay a one-time bill credit to all business basic local exchange service customers in an amount equal to the interest accrued on \$10 million from the date of the final Commission decision approving this Stipulation to the date that the new jobs orders for such investment are issued. U S WEST shall provide Staff and OCC with copies of all job orders issued to implement the capital investment referenced in this paragraph. Interest shall accrue at 10.11%.

U S WEST agrees to work with Staff and OCC to establish procedures for the purpose of segregating the investment contemplated by this section and facilitating Staff's and OCC's efforts to track and confirm the level of investment made.

In the event the investment necessary to implement the Commission's decision to modify the definition of basic local exchange service in Docket No. 98I-213T and the subsequent rulemaking exceeds \$40 Million, U S WEST may seek to recover that additional investment.

In the event the Commission does not include additional elements in the definition of basic service as a result of the Docket No. 98I-213T, by January 1, 2000, or implements changes requiring less than \$40 million capital investment, U S WEST agrees to invest the total amount, or the remaining amount, not to exceed the total of \$40 Million dollars, in support of improved telecommunications services as approved by the Commission no later than January 1, 2001 and prior to expenditure of funds. U S WEST also agrees to pay a one time bill credit to all basic local exchange service customers in an amount

equal to the interest accrued on \$10 million from the date of the final Commission decision approving this Stipulation to the time the investment is made. Interest shall accrue at 10.11%. Stipulation

V. MISCELLANEOUS

A. Rate of Return Regulation

For the duration of the Plan, U S WEST will be regulated under a price regulation plan and will not be subject to rate of return regulation or any Phase I rate case.

B. Modification of Authorized Return on Equity

The Parties agree that U S WEST's authorized return on equity is in the range of 11.25% to 12%. If the plan is terminated, all Parties retain the right to advocate that a different rate of return on equity is appropriate at that time. The Parties agree that 11.25% return on equity shall be used during the term of the Plan in any proceeding where U S WEST's costs are at issue including any proceeding to establish U S WEST's receipts from the High Cost Support Mechanism and agree further that 12% may be used by U S WEST for financial reporting purposes.

C. Term of the Price Regulation Plan

This price regulation plan shall be in effect for a minimum of five (5) years as measured from Commission adoption of the Plan. At the end of four (4) years, U S WEST shall provide a report to the Commission indicating whether, in U S WEST's opinion, continued regulation under the Plan after the fifth year is appropriate.

D. Subsequent Rulemaking

The Parties agree that the Commission should initiate a rulemaking to determine the extent to which all jurisdictional telecommunications providers should be required to provide information to the Commission on the status and development of competition in Colorado.

2 Reporting Requirements

U S WEST will continue to provide [L1]reports as may have been or may be ordered by the Commission. U S WEST will maintain its accounting in accordance with Title 47, Part 32 of the FCC's rules and regulations. U S WEST further agrees to comply with the reporting requirements set forth in the Service Quality Plan, Section III. E.

3 Changes in Commission Rules

All Parties retain the right to recommend changes to the Commission's rules, including service quality rules, during the term of the plan.

VI. GENERAL PROVISIONS

A. This Agreement is made for settlement purposes only. No Party concedes the validity or correctness of any regulatory principle or methodology directly or indirectly incorporated in this Agreement. Furthermore, this Agreement does not constitute agreement, by any Party, that any principle or methodology contained within this Agreement may be applied to any situation other than the above captioned cases. No precedential effect or other significance, except as may be necessary to enforce this Agreement or a Commission order concerning the

Agreement, shall attach to any principle or methodology contained in the Agreement.

B. The Parties expressly reserve the right to advocate positions different from those stated in this Agreement in any proceeding other than one necessary to enforce this Agreement or a Commission order concerning the Agreement. Nothing in this Agreement shall constitute a waiver by any Party with respect to any matter not specifically addressed in this Agreement.

C. This Agreement shall not become effective and shall be of no force and effect until the issuance of a final Commission order approving this Agreement, which Order does not contain any modification of the terms and conditions of this Agreement which is unacceptable to any of the Parties hereto. In the event the Commission modifies this Agreement in a manner unacceptable to any Party hereto, that Party may withdraw from the Agreement and shall so notify the Commission and the other Parties to the Agreement in writing within ten (10) days of the date of the Commission order. In the event a Party exercises its right to withdraw from the Agreement, this Agreement shall be null and void and of no effect and no force in these or any other proceedings. The Commission shall proceed to consider Docket No. 97A-540T as if this Agreement had not been presented.

D. In the event this Agreement becomes null and void or in the event the Commission does not approve this Agreement, this Agreement, as well as the negotiations or discussions undertaken in conjunction with the Agreement, shall not be admissible into evidence in these or any other proceedings.

E. Approval by the Commission of this Agreement shall constitute a determination that the Agreement represents a just, equitable, and reasonable resolution of all issues which were or could have been contested among the Parties in this proceeding and in the proceedings identified in Section I. C. above.

F. The Parties state that reaching Agreement in the dockets captioned above by means of a negotiated settlement is in the public interest and that the results of the compromises and settlements reflected by this Agreement are just, reasonable, and in the public interest. The Parties agree to a waiver of any Commission rule to the extent necessary to implement or to effectuate this Agreement.

G. This Agreement may be executed in separate counterparts. The counterparts taken together shall constitute the whole Agreement.

Dated this _____ day of October, 1998.

Respectfully submitted,

Approved as to Form:

U S WEST

By: _____

By: _____

Kathryn E. Ford, Esq.
1801 California St., Suite 5100
Denver, CO 80202
(303) 672-2776
Attorney for U S WEST

Paul R. McDaniel
Director, Regulatory Affairs
1801 California St., Suite 4700
Denver, CO 80202
(303) 896-4552

STAFF OF THE COLORADO PUBLIC
UTILITIES COMMISSION

By: _____

By: _____

Mana L. Jennings-Fader, Esq.
Gregory E. Sopkin, Esq.
Assistant Attorneys General
Regulatory Law Section
1525 Sherman St., 5th Floor
Denver, CO 80203
(303) 866-5267
Attorneys for the Staff of the
Public Utilities Commission

Bruce N. Smith
Director, Colorado Public Utilities
Commission
1580 Logan St., 2nd Floor
Denver, CO 80203
(303) 894-2000, Ext. 304

COLORADO OFFICE OF CONSUMER
COUNSEL

By: _____

By: _____

Ann E. Hopfenbeck, Esq.
Michelle A. Norcross
Assistant Attorneys General
Civil Litigation Section
1525 Sherman St., 5th Floor
Denver, CO 80203
(303) 866-5182
Attorneys for the Colorado Office
of Consumer Counsel

Kenneth V. Reif, Esq.
Director, Colorado Office of
Consumer Counsel
1580 Logan St., S. 610
Denver, CO 80203
(303) 894-2121

Approved:

ATTACHMENT A

SQP Measure	Description of Measure	Non-Compliant Performance	Maximum at risk-	Source
<i>Held Orders: 0 over 150 Working Days</i>	Customer requests for service held over 150 days.	Per occurrence maximum of \$125,000 annual per held order. Amount to be prorated based on the number of months for each held order. ¹	\$6,000,000 per year.	Rule 723-2-24.4.2
<i>Held Orders: Wire center-specific parameters.</i>	Customer requests for service held over 30 days.	>0 wire centers with the lesser of 50 or 5% of the total number of service applications in a wire center in a consecutive 3-month period are held service orders.	\$2,000,000 per year.	Rule 723-2.6.2.3
<i>Access to U S WEST Sales Center</i>	% Time calls to sales office are answered in the first minute.	<85% of Calls Answered in 60 Seconds or Less.	\$250,000 per year.	Rule 723-2-21.2.4
<i>Wire Centers Over 8 Reports per 100 Lines (3 Months)</i>	A count of wire centers with over 8 reports per 100 lines during a 3-month consecutive period.	>0 Wire Centers with over 8 reports per 100 lines during a 3-month consecutive period.	\$3,500,000 per year.	Rule 723-2-22.1
<i>% Out-of-Service Reports Cleared in 24 Hours</i>	% Of out-of-service trouble reports cleared within 24 hours.	>0 wire centers with <85% Cleared Within 24 Hours.	Maximum at risk: \$2,000,000 per year; Maximum of \$75,000 per wire center per year. \$15,000 per wire center per month for wire centers less than 10,000 access lines. \$25,000 per wire center per month for wire centers greater than or equal to 10,000 access lines.	Rule 723-2-22.2
<i>Access to USWC Repair Center</i>	% Time calls to repair office are answered in the first minute.	<85% Calls Answered in 60 Seconds or Less.	\$250,000 per year.	Rule 723-2-21.2.4
<i>Ancillary Services Completion</i>	% of calls to toll and directory assistance answered within 10 seconds.	<85% of calls to toll and directory assistance answered within 10 seconds.	\$100,000 per year.	Rule 723-2-21.2.3

¹ The calculation of a held order over 150 days shall be made on a case by case basis. U S WEST may seek waivers on an individual case by case basis.

SQP Measure	Description of Measure	Non-Compliant Performance	Maximum at risk	Source
Network Reliability-Switch + Trunk + Toll Network Call Completion	Sufficient central office and interoffice channel capacity plus other necessary facilities to meet minimum requirements during any normal busy hour.	<p>(a) <98% of call attempts receive dial tone within 3 seconds during any normal busy hour. At U S WEST's option, it may use the call blockage measurement. Call blockage is measured by switch defects per million (DPM) during any normal busy hour.</p> <p>(b) <98% correct termination of properly dialed intraoffice or interoffice calls within an extended service area during any normal busy hour by trunk group.</p> <p>(c) <98% correct termination of properly dialed intraLATA or interLATA when the call is routed entirely over the network of U S WEST during any normal busy hour by trunk group.</p> <p>(d) <98% correct termination of properly dialed jurisdictional toll calls during any normal busy hour by trunk group.</p>	<p>(a) Maximum incentive of \$300,000 per year. Maximum incentive of \$15,000 per switch per year. Maximum incentive of \$5000 per switch per month.</p> <p>(b) Maximum incentive of \$200,000 per year. Maximum incentive of \$3000 per year per trunk group. Maximum incentive of \$1000 per trunk group per month.</p> <p>(c) Maximum incentive of \$200,000 per year. Maximum incentive or \$3000 per trunk group per year. Maximum incentive of \$1000 per trunk group per month.</p> <p>(d) Maximum incentive of \$200,000 per year. Maximum incentive of \$3000 per trunk group per year. Maximum incentive of \$1000 per trunk group per month.</p>	Rule 723-2-21.1.1 (a-c) and Rule 723-2-21.1.2
Total			\$15,000,000 per year.	

ATTACHMENT B

Basic Local Exchange (including outside the base rate area) recurring and nonrecurring

Public Access Lines recurring and nonrecurring

Switched Access recurring and nonrecurring

Centrex Plus recurring and nonrecurring

Centrex 21 recurring and nonrecurring

CENTRON I recurring and nonrecurring

ISDN recurring and nonrecurring

Direct Inward Dialing recurring and nonrecurring

DS1 recurring and nonrecurring

DS3 recurring and nonrecurring

Digital Switched Service recurring and nonrecurring

Digital Data Service recurring and nonrecurring

CLASS features and custom calling features recurring and nonrecurring

Directory Listings recurring and nonrecurring

Multiline Hunt recurring and nonrecurring

Toll recurring and nonrecurring

Toll restriction recurring and nonrecurring

Foreign Exchange recurring and nonrecurring

Analog Private Line (NAC, Voice Grade 32, Voice Grade 36) recurring and nonrecurring

Note: Non-recurring only provided where applicable. LRIC studies may be substituted for TSLRIC studies where permitted by the Commission under a pre-existing grant of relaxed regulation.

ATTACHMENT C

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

RULES PRESCRIBING PRINCIPLES FOR COSTING AND PRICING OF REGULATED SERVICES OF TELECOMMUNICATIONS SERVICE PROVIDERS

4 CODE OF COLORADO REGULATIONS (CCR) 723-30

BASIS, PURPOSE, AND STATUTORY AUTHORITY

The basis and purpose for these rules are to standardize the determination of costs for pricing of regulated services of telecommunications service providers, other than competitive local exchange carriers, in the State of Colorado. The Colorado Public Utilities Commission (Commission) is entrusted with the regulation of rates and charges of all products and services offered by telecommunications providers under its jurisdiction. In the regulation of those rates and charges, the Commission has the responsibility to ensure that the rates and charges are just and reasonable (See § 40-3-101, C.R.S.).

The advent of competition into many telecommunications markets and the deregulation of products and services by either state or federal authorities have greatly complicated the Commission's responsibility to determine whether rates and charges of telecommunications services regulated by the

In mathematical terms, total incremental cost equals total cost assuming the increment is produced, minus total cost assuming the increment is not produced.

723-30-2.44 Total Service Incremental Revenue. The change in the firm's total revenues resulting from adding or deleting a service.

723-30-2.45 Total Service Long Run Incremental Cost. Total service long run incremental cost is equal to the firm's total cost of producing all of its services assuming the service (or group of services) in question is offered minus the firm's total cost of producing all of its services excluding the service (or group of services) in question.

723-30-2.45(a) The strict definition of total service long run incremental cost requires that it be calculated by first doing two total cost studies and then subtracting one from the other. On the other hand, an estimate of total service long run incremental cost can be made directly.

723-30-2.45(b) The strict definition of total service long run incremental cost incorporates a forward looking concept which should, therefore, include the costs that the firm would incur today if it were to install its network from scratch. On the other hand, an estimate of total service long run incremental cost can be generated by assuming that the geographic locations of routes and possible switching locations are the same as those available to the firm today and that the types of technological change in the future can be anticipated. In making this estimate, the assumptions

behind it should be made explicit; in addition, the estimating procedure should reflect the time period in which the resulting prices are anticipated to be in effect.

723-30-2.45(c) Total service long run incremental cost includes both fixed and variable costs specific to the service (or group of services) in question.

723-30-2.45(d) The total service long run incremental cost for a group of services is at least equal to the sum of the total service long run incremental costs of the individual services within the group. If the total service long run incremental cost for the group is greater than this sum, the difference is equal to the shared costs attributable to the group of services and/or to some subset of that group. In other words, these shared costs are part of the total service long run incremental cost of the group but are not part of the total service long run incremental cost of any individual service within the group.

723-30-2.46 Unbundling. A situation in which the rate elements and tariff provisions for a service are disaggregated to the lowest level practicable to permit customers to buy the features and functions desired by them without having to purchase unneeded features and functions.

723-30-2.47 Variable Cost. A cost that changes (but not necessarily proportionately) either with the number of units produced of a given set of services or with the number of services provided.

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO**

* * *

IN THE MATTER OF THE)	
APPLICATION OF U S WEST)	
COMMUNICATIONS, INC.)	DOCKET NO. 97A-540T
FOR SPECIFIC FORMS OF)	
PRICE REGULATION)	

THE APPLICATION OF THE MOUNTAIN)	
STATES TELEPHONE AND TELEGRAPH)	
COMPANY DOING BUSINESS AS U S WEST)	
COMMUNICATIONS, INC., FOR APPROVAL)	DOCKET NO. 90A-665T
OF A FIVE YEAR PLAN FOR RATE AND)	
SERVICE REGULATION AND FOR A)	
SHARED EARNINGS PROGRAM)	

AMENDMENT TO STIPULATION AND SETTLEMENT AGREEMENT

U S WEST Communications, Inc. ("U S WEST" or "Company"), the Staff of the Colorado Public Utilities Commission ("Staff"), and the Colorado Office of Consumer Counsel ("OCC"), collectively referred to as the "Parties," hereby incorporate the following additional terms into the Stipulation and Settlement Agreement filed with the Commission on October 29, 1998 in the above captioned dockets. The Parties agree that the incorporation of these additional terms is just, reasonable, and in the public interest.

1. When U S WEST initially receives support from the Colorado High Cost Support Mechanism and files an advice letter to lower its rates pursuant to Rule 4 CCR 723-41-8.7.2.2, the Parties agree that U S WEST shall file to lower its rates for switched access service and toll service each by 1/3 of

U S WEST receipts from the mechanism. The Parties further agree that U S WEST shall file to lower selected business local exchange services collectively by the remaining 1/3 of U S WEST's receipts from the High Cost Support Mechanism. Staff and OCC shall support U S WEST's filings.

2. Following the reductions for switched access services contemplated by this Agreement and Amendment, switched access rates may not be increased except through an advice letter filing on 30-day notice as is the current procedure.
3. No person is precluded from recommending, nor is the Commission precluded from considering further modifications to switched access rates during the term of the plan.
4. On January 4, 1999, U S WEST shall file interim tariffs and supporting workpapers effective on one day notice to reduce and restructure the local transport element of switched access service \$12 million consistent with the effective interstate local transport structure with no increase to any existing rate element and without creating any new rate elements (not existing in the current interstate local transport structure). Staff and OCC agree to recommend that these interim tariffs should be allowed to go into effect by operation of law.
5. On January 15, 1999, U S WEST shall file permanent tariffs to reduce switched access rates. Some portions of the tariffs may become effective in more than thirty days because the filing shall encompass the \$12 million

access reduction set to take place on January 4, 1999 on an interim basis, the potential \$7 million access rate reduction set to take place in the event the Commission determines not to assess the HCSM surcharge on residential and business basic local exchange customers, and the projected access rate reduction associated with the implementation of the HCSM (1/3 of the currently estimated \$57 million U S WEST is expected to receive from the HCSM).

6. If the Commission suspends the permanent tariffs, the Parties agree to recommend that the Commission consider the filing on an expedited basis. Specifically, the Parties agree to recommend to the Commission:
 - Discovery or audit may commence on January 4, 1999.
 - Discovery responses shall be due within five business days of receipt unless otherwise agreed to by the proponent and respondent. All other Commission rules regarding discovery shall continue to apply.
 - U S WEST shall file testimony, workpapers and appropriate cost studies on January 15, 1999 and provide a copy to the Parties and any other person who makes a written request.
 - Intervenor shall file answer testimony on March 16, 1999.
 - Rebuttal and cross-answer shall be filed on April 12, 1999.
 - The hearing commence on April 22, 1999, or as soon thereafter as the Commission may accommodate.

- At the hearing, parties other than U S WEST who present specific alternative rate design plans may present oral rebuttal and U S WEST may have oral rebuttal to address new issues raised at the hearing.
 - All filings, discovery and audit requests, and discovery and audit responses shall be hand-delivered to parties in the Denver metropolitan area and overnight mailed to everybody else.
7. Staff and OCC agree not to oppose the manner in which U S WEST implements the toll reductions contemplated by this Agreement provided that U S WEST complies with the pricing provisions in the Stipulation. Staff and OCC reserve the right to challenge the level of toll reductions implemented by U S WEST if they believe that U S WEST has not complied with the Stipulation.

Dated this 23rd day of November, 1998.

Respectfully submitted,

Approved as to Form:

U S WEST

By: _____

By: _____

Kathryn E. Ford, Esq.
1801 California St., Suite 5100
Denver, CO 80202
(303) 672-2776
Attorney for U S WEST

Paul R. McDaniel
Director, Regulatory Affairs
1801 California St., Suite 4700
Denver, CO 80202
(303) 896-4552

STAFF OF THE COLORADO PUBLIC
UTILITIES COMMISSION

By: _____

By: _____

Mana L. Jennings-Fader, Esq.
Gregory E. Sopkin, Esq.
Assistant Attorneys General
Regulatory Law Section
1525 Sherman St., 5th Floor
Denver, CO 80203
(303) 866-5267
Attorneys for the Staff of the
Public Utilities Commission

Bruce N. Smith
Director, Colorado Public Utilities
Commission
1580 Logan St., 2nd Floor
Denver, CO 80203
(303) 894-2000, Ext. 304

COLORADO OFFICE OF CONSUMER
COUNSEL

By: _____

By: _____

Ann E. Hopfenbeck, Esq.
Michelle A. Norcross, Esq.
Assistant Attorneys General
Civil Litigation Section
1525 Sherman St., 5th Floor
Denver, CO 80203
(303) 866-5182
Attorneys for the Colorado Office
of Consumer Counsel

Kenneth V. Reif, Esq.
Director, Colorado Office of
Consumer Counsel
1580 Logan St., S. 610
Denver, CO 80203
(303) 894-2121

Approved: