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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. U S WEST COMMUNICATIONS, INC., Respondent.	)	DOCKET NO. UT-970766 14TH SUPPLEMENTAL ORDER COMMISSION ORDER ON RECONSIDERATION SERVICE QUALITY AND DIRECTORY ASSISTANCE REVENUES ISSUES)

BACKGROUND

The Commission entered an order on January 16, 1998, resolving this proceeding. Within the time provided by law, U S WEST Communications, Inc. (USWC or the Company) and Commission Staff each petitioned for clarification or reconsideration. The Commission resolved many of the issues in the 12th Supplemental Order, entered February 27, 1998. By agreement of the parties, two issues were reserved for later presentations and discussion. We now address those issues.

INTRODUCTION

USWC requested clarification of the service quality standards it must meet in order to remove the return on equity and incentive pay disallowances imposed in Commission orders in UT-950200 and this docket. USWC also requested permission to approach the Commission at a later date to increase revenues if Directory Assistance revenue estimates used in this proceeding are not met.

DISCUSSION OF THE ISSUES

I. Service Quality Standards for Removing Restrictions

Discussion. The Commission's order in UT-950200 reads in part as follows (emphasis is added in all of the following excerpts):

> The Company will be expected to demonstrate that its service quality in terms of held orders, in terms of missed or incomplete appointments, in terms of repair service in compliance with the rule, and in terms of customer complaints to the Commission, all have **returned to and remain stable at levels comparable with the Company's experience prior to 1991 and consistent with other local exchange companies** within the State. **The petition will be particularly persuasive if Commission Staff and Public Counsel join in it.**

The order amplified this by stating,

> [Finding of fact 7] Team bonus awards and merit payments . . . fail to tie bonus payments clearly and directly to customer service goals and permit[s] emphasis on financial performance to the exclusion of customer service. Allowing the Company to petition for adjustment via a modification of this Order, and to secure the difference as found in this order **upon a showing that the standards for payment of the awards meet Commission requirements and a showing of substantially improved, stable customer service performance**, will provide incentive to the Company to improve its customer service performance.

> [Finding of Fact 8] Setting the Company's authorized rate of return on equity at the low end of the reasonable range and allowing the Company to petition for adjustment via a modification of this Order, and to secure the difference as found in this order **upon a showing of substantially improved, stable customer service performance**, will provide incentive to the Company to improve its customer service performance.

> [Ordering paragraph 4] The Company is authorized to petition in this Docket to have its rate of return restored to mid-range and to authorize the team and merit award adjustment upon USWC's satisfactory demonstration that its service quality has **significantly improved, as specified in the body of this Order**.

In its petition, USWC asks the Commission to clarify the standards by which service-based income restrictions can be removed. The Company argues that uncertainties remain over what constitutes substantial and significant improvement in service quality. The Company urges that time and resources that would likely be devoted to later debate could be spared if the Commission establishes clear standards now.

The Company makes specific recommendations for such standards. It recommends that the Commission reject a measure based on the same *number* of trouble tickets and total complaints in 1991, and that the Commission approve a measure based on the *ratio* of trouble tickets and total complaints to total lines in 1991. Held orders would be stated as a ratio to orders for new or relocated service. The company also argues that blocking or trunking complaints should not be included in the complaint count, as they are driven by factors partially or wholly outside of USWC's control.

Commission Staff and Public Counsel ask the Commission to reject establishing benchmarks through this proceeding but suggest that the Commission establish a process in which they and the Company work to develop comprehensive service quality standards. Both argue that establishing benchmarks in this order is outside the scope and the evidence of this proceeding.

Commission Staff contends that the Company's recommendations are too narrow. Both Staff and Public Counsel oppose excluding blocking complaints. Public Counsel believes that complaints made directly to the company should be included and that measures should go beyond aggregate state counts to assure that service in each exchange is adequate.

Public Counsel has started investigating the elements of a general service quality index (which the Commission rejected in this proceeding) and estimates that five months of a Commission-recognized process would be needed for all parties to adequately understand the company's current and historical performance sufficiently to establish appropriate measures. Staff believes the Commission could direct parties to attempt to formulate a set of standards and if parties could not agree, resolve the issue in a contested case. An alternative, suggests Commission Staff, is to direct the Company to file for the adjustments when it believes it has improved its service to an acceptable level.

USWC replies that the company's recommendations are based on the issues addressed in the Commission's UT-950200 order. The Company asks whether these are the standards that must be met, or whether there will be some other standard or additional measurements to contend with in the future filing. USWC says it is necessary that it know what it must do to remove the earnings restrictions. The Company argues that it needs the clarification, citing a U.S. Supreme Court decision that the basis for administrative action must be set forth with clarity. USWC continues to argue against a quality index that is developed and applied only to USWC, but supports establishing such an index within a context of an alternative form of regulation, if it applies for that regulation.

Commission Decision. Our goal is that the Company quickly achieve lasting and stable service quality improvements. We appreciate the opportunity to address these issues so the Company will reach the appropriate level of service quality -- and the Commission can eliminate the disallowances -- as soon as possible.

In effect, the Company and Public Counsel are seeking reopening of Docket UT-950200 to modify the Commission order. Public Counsel seems to be asking the Commission to expand the measures identified in the order and to implement a general service quality standard in an entirely new proceeding, despite our rejection of just such a measure in the final order in this proceeding. The Company seeks to have us modify the order by adding definitions of the specific measures and conditions to the implementation. This was not a service quality case, and we have neither a sufficient record nor the actual Company experience that we expect will allow us to resolve matters fully.

While we decline to modify our earlier order, we expect that some discussion of the issues will provide the parties with a measure of certainty. The Company's request that additional clarity be provided seems to be reasonable, given the parties' disparate views.

The Commission's order in UT-950200 is specific about the service indicators that the Commission found fault with during that proceeding and is specific in limiting required improvement to those measures. They are held orders, missed or incomplete appointments, repair service in compliance with the rule, and customer complaints to the Commission. We will not add new measures to those that were listed and will save the development of comprehensive measures to a later time.[1]

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[1]We note that the order's reference to the team and merit incentive awards also requires

1. Meeting 1991 levels. The 1996 order requires the Company to demonstrate performance that is "comparable with" pre-1991 levels and "consistent with other local exchange companies within the State" on the listed measures as a condition of lifting the revenue restrictions. It can do this by showing that the measures have reached pre-1991 levels.

a. Service quality comparable with levels prior to 1991 is required. This does not require that the company demonstrate exactly the same number of complaints or other measures, for example, but if the measures are not identical the order does require the Company to demonstrate that the levels are comparable.

b. Service quality must also be consistent with the service quality provided by other local exchange companies in the state. We anticipate that the two measures will be comparable. If they are not, this measure can afford a degree of flexibility if changes common to the industry render pre-1991 levels an inappropriate target. If the Company argues this, we would expect it to demonstrate what the changes have been and why this consistency should be the appropriate measure

2. Stability. The order requires that the measures have "returned to and remain stable at" the required levels. This means that the Company must demonstrate some track record of achievement and that the improvements be sustained at satisfactory levels. A one-time spike to the required levels will not satisfy this requirement. The Commission wants assurances that the Company has made the commitment and devoted the capital and personnel resources needed for a long-term improvement -- to effect something lasting. This must be demonstrated via a sustained pattern of success. The Commission would consider a sustained pattern of improvement, culminating in success, especially if the curve at the point of success is relatively flat and the achievement is supported with information proving the Company's capital and personnel commitments.

3. Individual measures. The Order identified the following measures as those the Commission would consider in measuring service quality for purposes of the disallowances: held orders; missed or incomplete appointments; repair service in compliance with the rule, and customer complaints to the Commission.

Each of these criteria appears to us to be relatively clear. Repair service in compliance with the rule seems to be the most clear. It might be argued as to the others whether to use pre-1991 raw numbers or, as USWC argues, pre-1991

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changes in the plan. We do not address that issue in this order.

proportions to lines in service or some other referent. Certainly the most conservative approach would be to use raw numbers. The Company is free to argue, perhaps with reference to the experience of other in-state ILECs, that its preferred method yields proper results in light of the Commission's purposes or that the prior levels are simply not achievable for reasons beyond the Company's control. We do not have enough information to make a decision at this point. Our concern is that the Company's overall level of service on the identified measures affords consumers a consistent, sustained, stable, and reasonable expectation of the same high level of service that the Company provided before 1991.

The order's requirement to consider Commission complaints does not exclude any class or type of complaint, as the exclusion would in itself lead to a degraded level of service. The requirement thus anticipates the consideration of evolving service quality issues such as trunk blocking, which we believe should be taken into consideration. The requirement does not anticipate consideration of consumer complaints made directly to the Company.

4. <u>"Early" consideration.</u> The Commission cannot decide in advance of a thorough presentation exactly when it would lift the restrictions, short of total achievement of 1991 levels. Defining a lower level now would actually reduce the incentives to achieve 1991 service levels, as the reduced level would become the goal instead of the 1991 level. As stated in the order, the Commission will *consider* removing the restrictions when the Company demonstrates that it has made <u>consistent progress</u> and <u>substantial compliance</u>, on a <u>stable or sustained basis</u>, of the specific enumerated service goals, approaching complete achievement of 1991 levels. What we seek is clear and convincing evidence not only that the Company is working on its service quality problems, but that it is achieving significant, substantial, sustained success and that it *will* achieve the target levels.

We expect that this option will be available if the Company can demonstrate that insistence upon the "letter" of pre-1991 levels would be exceptionally burdensome on the Company, and if the Company has achieved substantial and sustained progress and has nearly achieved the relevant pre-1991 levels for a long enough period that the Commission can reasonably find that customers will receive satisfactory service.

5. <u>Cooperation.</u> Finally, the Commission stated that it would weigh, in considering a petition to lift the requirements before the Company had met the letter of the requirements, whether the petition is supported by Commission Staff and Public Counsel.

We encourage the three parties to develop a collegial and trusting relationship based on consistent and responsible behaviors. We expect that the parties will meet to discuss these issues, and at the parties' request the Commission will facilitate or find a facilitator for such meetings. The parties will find it necessary to work together in adjudications and other processes in the future. A spirit of earned trust and respect will enhance the ability of each to achieve the interests important to it, without sacrificing principle.

The Commission reaffirms the requirements of the prior orders, with the clarifications set out above.

Conclusion. The order in UT-950200[2] stated the specific elements on which the Commission based its decision to restrict the Company's revenues. We decline to go beyond those elements.

The order required a return to 1991 service quality levels on the indicators that it referenced for the Company to achieve removal of the restrictions as a matter of right. The order also indicates that the Commission will *consider* lifting the restrictions on a showing of consistent progress, substantial compliance, and stable or sustained achievement of service goals approaching complete achievement of 1991 levels. The order sought a change in Company attitude and Company behavior that is reflected in real and long-lasting improvement. The order encouraged cooperation among the parties, stating that the Commission would look most favorably on a request to lift the restrictions that was supported by Commission Staff and by Public Counsel. All of those elements, affirmed by the State Supreme Court, remain sound and reasonable.

The Company may petition in Docket No. UT-950200 for modification of the order in that docket, to lift the restrictions. The Commission's expectations regarding the standards established in that docket are set out in this order.

II. "Make-Whole" Opportunity for Directory Assistance Revenues

USWC asks the Commission to reconsider its calculation that Directory Assistance revenues will produce an additional $7.7 million, although the Company points to no evidence in the record that revenues would fail to meet the estimate. The Company requests permission to petition the Commission for a revenue adjustment if Directory Assistance revenues fail to meet the estimate after six months under the new, $.60 rate.

[2]References to the order in Docket No. UT-950200 are to the 15th Supplemental order, which the Supreme Court of the State of Washington affirmed on December 24, 1997.

Public Counsel calls this request a proposal for retroactive and single issue ratemaking. Commission Staff calls it piecemeal relief. If accepted, Public Counsel contends, any party would be free to reopen a case to show that any estimated revenues failed to meet expectations.

Commission Decision. The Commission rejects the Company's request. Every rate case is a composite of estimates calculated from past experience and the application of sound judgment. An order gives the Company the opportunity to earn at a given level, reflecting relationships between revenues and expenses. It is not a guarantee that each element will meet estimates. The proper means to examine those relationships is a general rate case. The Company's remedy for failure to meet authorized rate of return is to file a general rate case.

The Commission so orders.

DATED AND EFFECTIVE at Olympia, Washington this 24th day of March 1998.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ANNE LEVINSON, Chair

RICHARD HEMSTAD, Commissioner

WILLIAM R. GILLIS, Commissioner