

Decision No. C99-407

**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.

---

**RULING ON APPLICATIONS FOR REHEARING,  
REARGUMENT, OR RECONSIDERATION**

---

---

Mailed Date: April 22, 1999  
Adopted Date: April 7, 1999

**I. BY THE COMMISSION**

**A. Statement**

This matter comes before the Commission for consideration of two applications for rehearing, reargument, or reconsideration ("RRR") and one request for clarification to Decision No. C99-222. In that decision we adopted a Stipulation and Settlement Agreement and the Amendment to the Stipulation and Settlement Agreement (collectively the "Stipulation"), with some modification, which outline a form of price regulation other than rate of return regulation for U S WEST Communications, Inc.

("USWC"). The Stipulation also proposes specific rate and revenue reductions totaling \$84 million annually for five years. USWC and MCI WorldCom, Inc., ICG Telecom Group, Inc., NEXTLINK Colorado, L.L.C., and McLeodUSA Telecommunications Services, Inc. (collectively the "Joint Petitioners"), filed applications for RRR. The Commission Staff ("Staff") also filed a request for clarification. USWC filed a motion for leave to file a response to the Joint Petitioners' RRR, as well as the response itself. Having considered the merits of each of the applications, we will grant them, in part, and deny them, in part, consistent with the discussion below.

**B. Staff**

1. Staff requests clarification on two points:

- a. when does the plan become effective; and
- b. does USWC revert to rate-of-return regulation at the end of the plan, assuming no action by the Commission or change in applicable statutes.

2. The Commission finds that the plan should begin on the effective date of the final Commission decision. This beginning date shall also apply to the service quality part of the plan, although we must address it separately because of its complex nature.

3. Under the plan, the measurement of individual service quality variables is done on a monthly basis, therefore

tracking of service quality should begin on the first day of a month. On the other hand, the overall service quality part of the plan is constructed on a 12-month, calendar-year basis. Consequently, we direct that the tracking of service quality begin on January 1, 1999. Service quality data will be collected for the entire calendar year, and the bill credits calculated exactly as described in the Stipulation. However, the actual bill credits, will be scaled-down for the first and last years of the plan to reflect the portions of those years in which the plan was in effect.<sup>1</sup> This approach has the advantage of allowing the fundamental part of the service quality component of the Stipulation to be applied exactly as written, and to go into effect the same day as the rest of the plan. While this approach uses data from the first part of 1999 and the last part of 2004 when the plan is not actually in effect, it does so **for tracking purposes only**. USWC will still be liable for bill credits only during the actual five-year period of the plan.

4. The Stipulation, however, states that "Performance results will be reported thirty (30) days after the end of each month and provided to Staff and OCC for review" (p.17, ¶ III.E.1.d). It goes on to outline the procedure USWC may use

---

<sup>1</sup> For example, if the plan were in effect for 243 days in 1999 and USWC's bill credits, calculated on a calendar year basis, were \$3,500,000, then the actual bill credit total would be \$2,330,137 [= (\$3,500,000) • (243/365)].

to request waivers for unusual events or situations. With respect to timing, USWC must file such requests for waiver within 30 days after the end of the pertinent month for all measures other than held service orders; these must be filed within 60 days. Clearly, USWC cannot meet these provisions for the first months of 1999, though it can be expected to do so prospectively. To adjust for this, the Commission directs that USWC provide the first months' data for 1999 at the same time as the data for the initial month in which the plan is actually in effect.<sup>2</sup> Any waivers for January through the initial month in which the plan is actually in effect could then be filed 30 days (or 60 days for held service orders) after the end of that initial month.

5. Concerning the second requested clarification, the Commission agrees with Staff that USWC will revert to rate-of-return regulation at the end of the plan, absent any action by the Commission or any change in the applicable statutes.

### C. USWC

1. In Decision No. C99-222, the Commission modified the Stipulation by requiring USWC to file completed customer contracts with the Commission. The Stipulation, in contrast requires USWC simply to file **notices** of contracts with certain

---

<sup>2</sup> For example, if the plan went into effect during April, the data for January through April would be due at the end of May.

confidential information. In its application for RRR, USWC requests that the Commission reverse its initial decision and adopt the original provisions of the Stipulation concerning the filing of contracts. To support this request, USWC makes three arguments:

a. If complete contracts are filed with the Commission, these competitively sensitive documents are subject to possible disclosure under the Open Records Act;

b. Competing local exchange carriers do not have to file complete contracts with the Commission; and

c. The filing of complete contracts was not deemed necessary for USWC when private line received flexible regulation in 1987, and no stricter requirements should be imposed on the contracting process here. See Decision No. C87-1347, dated September 28, 1987.

2. The Commission believes that the Open Records Act provides sufficient protection for competitively sensitive documents. Nevertheless we believe that the notice of contract, together with the agreed upon confidential information, may often be sufficient for review purposes. Consequently, we will grant USWC's request that it need only file the notice of contract, and the attached confidential information. The Commission may reserve the right to require USWC to file a specific complete contract, at the Commission's discretion.

#### **D. Joint Petitioners**

1. The approved Stipulation (pp. 25-26, ¶ IV.B) provides that USWC will invest up to \$40 million for costs it might incur to implement a change in the definition of basic service, without asking to recover the approximate \$10 million revenue requirement associated with this investment. The Joint Petitioners offer citations to the record to indicate that Staff witnesses William A. Steele and Bruce N. Smith both believed that this investment would cover the costs of upgrading data transmission speed for basic service customers from 2.4 kps to 14.4 kps. The Joint Petitioners argue, however, that more recently, in Docket No. 99R-027T, USWC has asserted that such an upgrade will cost \$120 million. (See Initial Comments of USWC, page 3 in Docket No. 99R-027). Because of this new information, the Joint Petitioners request that this docket be reopened to examine this issue.

2. USWC in response urges the Commission not to reopen this issue. USWC observes that, when given the opportunity earlier to address new issues raised by the Stipulation, the Joint Petitioners' witness chose not to comment at all on this \$40 million investment, nor to make any recommendation of his own concerning the capital investment necessary to implement a redefinition of basic service. Furthermore, USWC argues that the Joint Petitioners' interpretation of the \$40 million invest-

ment is misleading: the Stipulation never indicates that it will be spent to upgrade data transmission speed or for any other particular purpose; neither does the Stipulation warrant that the cost of a redefinition of basic service will not exceed \$40 million. Finally, USWC argues that the quotes from Mr. Steele and Mr. Smith were taken out of context and are consequently misleading.

3. The Commission finds that the Joint Petitioners' application for RRR is not well-founded. Concerning the investment needed to increase data transmission speed, in particular, we realize that any cost figure which pertains to future events is necessarily an estimate. In addition, even if \$120 million were a better estimate, we do not know at this point whether or not USWC will be required to make an investment of this magnitude because Docket No. 99R-027T is still ongoing. More importantly, however, we agree with USWC that the Stipulation explicitly states that, no matter how much investment is needed to implement a new definition of basic service, USWC will only forego revenue recovery on the first \$40 million. After that, it may seek recovery as usual. Furthermore, the \$40 million was never presented in the Stipulation as providing for any specific investment. Finally, if the \$40 million is not exhausted in implementing a redefinition of basic service, the Stipulation provides that the remainder be used to improve telecommunica-

tions services in general in ways approved by the Commission. In short, we interpret this portion of the Stipulation simply to mean that USWC has agreed to invest \$40 million to improve telecommunications services in Colorado in ways to be approved by the Commission, without seeking any revenue recovery; it has no necessary connection to increasing data transmission speed in particular. Consequently, we deny this application for RRR.

**E. USWC Motion**

On April 6, 1999, USWC filed a motion for leave to respond to the Joint Petitioners' RRR. The Commission finds that this filing gives good cause for entering such a response; thus, we grant this request.

**II. ORDER**

**A. The Commission Orders That:**

1. The application for clarification by Commission Staff is granted.

2. The application for rehearing, reargument, or reconsideration by U S WEST Communications, Inc., is granted.

3. The application for rehearing, reargument, or reconsideration by MCI WorldCom, Inc., ICG Telecom Group, Inc., NEXTLINK Colorado, L.L.C., and McLeodUSA Telecommunications Services, Inc., is denied.



4. U S WEST Communications, Inc.'s motion for leave to file response to the petition for rehearing, reargument, or reconsideration of MCI WorldCom, Inc., ICG Telecom Group, Inc., NEXTLINK Colorado, L.L.C., and McLeodUSA Telecommunications Services, Inc., is granted.

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

6. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
April 7, 1999.**

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

---

---

---

Commissioners