

**BEFORE THE PUBLIC UTILITIES
COMMISSION
OF THE STATE OF SOUTH DAKOTA**

**IN THE MATTER OF THE ESTABLISHMENT OF
SWITCHED ACCESS RATES FOR U S WEST
COMMUNICATIONS, INC.**

) **FINDINGS OF FACT,
CONCLUSIONS OF LAW,
ORDER AND NOTICE OF
ENTRY OF ORDER**

) **TC96-107**

)

On June 24, 1996, U S WEST Communications, Inc. (U S WEST) filed for approval by the Public Utilities Commission (Commission) its 1995 switched access cost study. According to the application, the study develops an overall average calculated rate of \$0.066 per minute required to recover the costs.

On June 27, 1996, the Commission electronically transmitted notice of the filing and the intervention deadline of July 12, 1996, to interested individuals and entities. The following companies were granted intervention on July 30, 1996: Sprint Communications Company L.P. (Sprint); MCI Telecommunications Corporation (MCI); Express Communications, Inc. (Express); AT&T Communications of the Midwest, Inc. (AT&T); Telecommunications Action Group (TAG)⁽¹⁾; and Dakota Cooperative Telecommunications, Inc. (DCT). The Commission also found that pursuant to SDCL 49-31-12.4, the rate increase should be suspended for 120 days.

A hearing was held on October 9 and 10, 1996, before the Commission. At a regularly scheduled meeting of the Commission on December 9, 1996, Commissioner Schoenfelder moved to reopen the record for the taking of more evidence. The motion was seconded by Commissioner Burg with Chairman Stofferahn dissenting. The hearing was set to continue on March 19, 1997, through March 21, 1997.

On January 16, 1997, AT&T moved the Commission to (1) disapprove the application of U S WEST for an increase in switched access rates and (2) to close this docket. A hearing on this motion was held before the Commission on January 23, 1997. Commissioner Nelson did not participate in these proceedings. At an ad hoc meeting on January 27, 1997, the Commission granted the motion of AT&T. Commissioner Nelson abstained from voting on this motion.

Based on the record in this matter, the Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

On June 24, 1996, US WEST filed for approval by the Commission its 1995 switched access cost study. The application indicated that the cost study develops an overall average calculated rate of \$0.066 per minute required to recover the costs of providing switched access. Switched access rates are charges made by U S WEST to other telecommunications companies for access to U S WEST exchanges.

II

Switched access rates are determined in accordance with a computer model developed by the Commission (Transcript 10,11), the terms of which are specified in Commission rules, ARSD Chapters 20:10:27 through 20:10:29, inclusive. A cost study must be filed with the Commission no less than every three years, ARSD 20:10:27:07/

III

Switched access rates result from information in the form of numerical data which is supplied into the Commission's computer model (Transcript 10). This information which is supplied is commonly referred to as "inputs." The end product is called a cost study.

IV

At the hearing before the Commission on October 9 and 10, 1996, U S WEST, through its witness Wayne G. Culp, introduced its cost study into evidence (Exhibit 3, Transcript 10).

V

The enhanced revenue to U S WEST would be in the range of 6 to 6.5 million dollars if the Commission approved U S WEST's cost study and the rates which U S WEST submits tha upports (Transcript 92).

VI

U S WEST witness Wayne G. Culp did not personally develop any of the figures that went into the cost study (Transcript 90); he acted in a supervisory capacity (Transcript 89). The model was actually run by other U S WEST employees (Transcript 89, 90). Witness Wayne G. Culp testified on behalf of U S WEST that these inputs were the truth (Transcript 92).

VII

Commission staff witness Robert Knadle's analysis of adjustments to inputs to the cost study made by U S WEST was based upon work papers that U S WEST furnished to data requests from staff. The responses of U S WEST were not supplied under oath and to his belief the numbers were checked by staff witness Harlan Best with reports that Harlan Best received (Transcript 107,108).

VIII

Commission staff witness Harlan Best's analysis of the cost study involved no verification of information that was contained in the reports upon which he relied to verify the cost model inputs. It was his belief that U S WEST's external auditors audited U S WEST's ledgers for the report. He did not inspect U S WEST's ledger or perform any random sampling of U S WEST's ledger entries used as inputs to the cost study (Transcript 124, 125,126).

IX

Commission staff witness Gregory Rislov did not perform any validation tests of numbers that U S WEST supplied nor did he perform any direct inspection of U S WEST's records (Transcript 154, 155,156).

X

AT&T witness Patricia A. Parker analyzed U S WEST's cost study and pointed to deficiencies in that cost study or areas that needed verification; those deficiencies or areas that needed verification included:

- a. whether U S WEST has included costs that are not related to the provisioning of basic access services;
- b. adjustments made to the inputs including salary, employee level, inflation adjustments in the base and process improvement cost were questionable;
- c. whether the rate of return on investment was improperly raised;
- d. adjustments for recent sales of U S WEST exchanges had not been met and appeared to use forecasted data;
- e. an increasing in U S WEST's costs by shortening its depreciation lives while not making an adjustment for a rate increase it was granted; and
- f. U S WEST's data was unaudited (prefiled testimony of Patricia A. Parker, Exhibit 8, 4 through 7).

XI

FirsTel President Fred L. Thurman, a certified public accountant, questioned U S WEST's use of proceeds from a prior sale of 55 rural South Dakota exchanges and how they impact this cost study. (Prefiled testimony, Exhibit 12, 3; Transcript 204 through 206). The switched access charges of U S WEST are approximately 50 percent of FirsTel's direct costs and as proposed would approximate a 100% increase in those costs (Transcript 189, 190). FirsTel would not be able to absorb this cost and it would be difficult for it to pass it on to customers due to the terms of their customer contracts (Transcript 189). Fred L. Thurman did not present specific evidence or express an opinion as to what he thought the switched access rate should be other than to say that a reasonable increase would be 10% or 15% (Transcript 202).

XII

Tele-Tech, Inc., witness Jerry R. Noonan, a practicing certified public accountant and majority stockholder of Tele-Tech, Inc., testified that the proposed switched access rate increase by U S WEST would eliminate his company from the marketplace (prefiled testimony, Exhibit 10, 2). These switched access charges represent approximately 60% of his company's direct business costs (Transcript 224). Jerry R. Noonan did not present specific evidence or express an opinion as to what he thought the switched access rate should be as a result of the cost study filed in this docket other than to recommend tha should stay a present \$.0314 plus inflation pending the full implementation of the Telecommunications Act of 1996 (Transcript 228, 229).

XIII

Midco Communications general manager Tom Simmons testified that his company does not have the wherewithal to absorb the cost of the proposed switched access rate, it would represent a 108% increase and that his contracts with associations to provide telecommunications services

to them only permit a 10% yearly increase in rates (Transcript 232 through 234). Midco employs 84 people (Transcript 242).

XIV

TCIC Communications witness Dennis Law testified that U S WEST's proposed switched access charge would represent a 108.4% increase to his company for such costs, that such charges represented approximately 50% of TCIC Communications' direct operating costs, 90% of their business originates in South Dakota and that they employed 25 full and part time employees (Transcript 248,253). Dennis Law did not present specific evidence or express an opinion as to what he thought the switched access rate should be.

XV

Tel Serv Telecommunications witness Susan Cook testified that U S WEST's proposed switched access increase would represent an increase of 124% in current switched access charges to her company. For increases in excess of 10%, their customers are allowed out of their contracts with Tel Serv Telecommunications. As to the increase, if allowed, she was unsure where Tel Serv Telecommunications would reallocate the costs (Transcript 256, 258). Susan Cook did not present specific evidence or express an opinion as to what she thought the switched access rate should be.

XVI

Sprint Communications Company Joni P. Siplon testified that the proposed switched access rate would represent an increase in switched access charges of approximately 112% to her company (prefiled testimony, Exhibit 7, 2). Joni P. Siplon did not present specific evidence or express an opinion as to what she thought the switched access rate should be.

XVII

Using the Commission's cost model,U S WEST's testimony was that the switched access charge was approximately 6.4 cents per minute of use (prefiled testimony Exhibit 3, 1). Staff's finding was 6.15 cents per minute of use (prefiled testimony, Exhibit 4, 5). At the hearing, U S WEST testified that it would "accept" staff's position (Transcript 11). U S WEST's real witness Wayne G. Culp put bounds around AT&T witness Patricia A. Parker's testimony (Transcript 331). He further testified on cross-examination while he did not agree with witness Parker's calculation or assertions, the rate would be approximately 5.55 cents per minute of use if her assertions were correct (Transcript 329, 330).

XVIII

The Commission on December 9, 1996, Commissioner Stofferahn dissenting, voted to reopen the record for purposes of taking further evidence. The grounds for this motion were: (1) depreciation was inadequately explained and unresolved was whether or no should be included in the cost model; (2) there was a lack of quantification by small resellers of the effect of the proposed rate increase on their membership; (3) small resellers had not presented alternatives to the cost model results; (4) concern over the affect of the size of the rate increase on small South Dakota resellers; and (5) a lack of verification of

numbers which went into the cost model. (Transcript of December 9, 1996 proceeding). The Commission issued a procedural order on January 10, 1997, setting the continuance of the hearing for March 19 through 21, 1997.

XIX

On January 6, 1997, U S WEST wrote a letter to the Commission informing it that U S WEST intended to exercise its statutory rights and implemen new rates on January 28, 1997.

XX

On January 16, 1997, AT&T moved the Commission to (1) disapprove the application of U S WEST for the increase in switched access rates and (2) close the existing docket.

XXI

On January 23, 1997, the Commission held a hearing on AT&T's motion, described in Finding XX, above.

XXII

At the hearing described in Finding XXI, above, U S WEST indicated to the Commission through its counsel of record that it was comfortable with the record, did not want to open it, that it was time for a decision and that it intended to implemen rate increase (January 23, 1997 proceeding Transcript 14, 29, 35). AT&T through its counsel of record indicated that it is time for a decision (January 23, 1997 proceeding Transcript 17).

XXIII

U S WEST's proposed switched access rates are not in the public interest.

XXIV

Inputs into the Commission's computer model must be accurate and reliable as the Commission's computer model produces a mathematical result which is entirely dependent upon inputs into it.

XXV

Inputs into U S WEST's cost study have not been adequately verified.

XXVI

U S WEST has not me burden of proof tha switched access rate which is the subject of this docket is fair and reasonable.

XXVII

The switched access rate which is the subject of this docket is not fair and reasonable.

XXVIII

The record in this docket does not sustain U S WEST's request for a switched access rate increase.

XXIX

U S WEST's cost study (attached to Wayne G. Culp's testimony, Exhibit 3) shall be given no evidentiary weight.

XXX

U S WEST's witness Wayne G. Culp lacks credibility and his testimony shall be given no evidentiary weight.

CONCLUSIONS OF LAW

I

The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26 and 49-31 and ARSD Chapters 20:10:27 through 20:10:29, inclusive.

II

This is a contested case under SDCL Chapter 1-26.

III

Pursuant to SDCL 49-31-12.4(3), U S WEST has the burden to prove tha proposed switched access rate is fair and reasonable.

IV

On issues of fact, the Commission may judge the credibility of witnesses and give appropriate weight to the testimony of each of them, including the reasonableness of the testimony when it is considered in the light of all evidence in the case. It may also give appropriate weight to evidence other than testimony which has been received.

V

The determination of the public interest is the function of the Commission and what it views as the public interest may change with or without a change in circumstances.

VI

U S WEST has not me burden of proving tha proposed switched access rate is fair and reasonable.

VII

U S WEST's proposed switched access rate is not fair and reasonable.

VIII

The implementation of U S WEST's proposed switched access rate is not in the public interest.

IX

The Motion of AT&T shall be granted

Based on the foregoing Findings of Fact and Conclusions of Law, it is therefore

ORDERED that U S WEST's application for an increase in switched access rates in this docket shall be denied; and it is further

ORDERED that this docket be closed.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that this Order was duly entered on the 31st day of January, 1997. Pursuant to SDCL 1-26-32, this Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties.

Dated at Pierre, South Dakota, this 31st day of January, 1997.

CERTIFICATE OF SERVICE

BY ORDER OF THE COMMISSION:

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

JAMES A. BURG, Chairman

By: _____

LASKA SCHOENFELDER,
Commissioner

Date: _____

PAM NELSON, Commissioner

(OFFICIAL SEAL)

(did not participate in this decision)

(1) TAG members include Midco Communications, TCIC Communications, TeleTech, FirsTel, and Tel Serv.

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