

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

IN THE MATTER OF THE INVESTIGATION OF )	FINDINGS OF FACT AND
U S WEST COMMUNICATIONS, INC.'S )	CONCLUSIONS OF LAW
SERVICE QUALITY PERFORMANCE )	AND ORDER DENYING
)	TARIFF REVISIONS;
IN THE MATTER OF THE FILING BY U S )	NOTICE OF ENTRY OF
WEST COMMUNICATIONS, INC. FOR )	ORDER
REVISIONS TO ITS EXCHANGE AND )	TC97-016
NETWORK SERVICES TARIFF AND )	
EXCHANGE AND NETWORK SERVICES )	TC97-049
CATALOG )	

On February 20, 1997, the Public Utilities Commission (Commission) opened a docket to review U S WEST Communications, Inc.'s (U S WEST) service quality performance pursuant to the Commission's Order Approving Stipulation and Addendum in Docket TC94-121. In Docket TC94-121 the Commission approved a rate increase for residential and business basic local exchange service. The Commission also decided that a proposed second increase may be implemented at the end of 18 months from the first increase upon review of U S WEST's service quality performance. The Commission directed the Commission Staff to review U S WEST's service quality performance at the end of 12 months following the effective date of the increase allowed in TC94-121.

On February 20, 1997, the Commission electronically transmitted a copy of the Order Opening Docket and the intervention deadline of March 7, 1997, for Docket TC97-016 to interested individuals and entities. On February 25, 1997, MCI Telecommunications Corporation (MCI) filed a Petition to Intervene, and on March 4, 1997, AT&T Communications of the Midwest, Inc. (AT&T) filed a Petition to Intervene. By Order dated April 28, 1997, the Commission granted both Petitions to Intervene. A procedural schedule for testimony and a hearing on this matter was scheduled.

On April 30, 1997, the Commission received a filing by U S WEST that reflected the second phase of increases. An intervention deadline of May 16, 1997, was established and MCI and AT&T each filed timely petitions to intervene. The Commission considered the Petitions to Intervene in Docket TC97-049. On June 3, 1997, at a duly noticed meeting, the Commission granted both Petitions to Intervene. Staff recommended that the Commission consolidate TC97-016 and TC97-049 as they are closely related and interdependent on each other. No parties objected to the consolidation. The Commission consolidated Dockets TC97-016 and TC97-049.

On May 20, 1997, the Commission issued its Amended Order for and Notice of Procedural Schedule and Hearing scheduling a hearing for June 12-13, 1997. The hearing was commenced as scheduled. The Commission continued the hearing so that the parties and the Commission could identify any outstanding issues once the June 12, 1997, transcript became available. The procedure established by the Commission permitted U S WEST to draft a list of the issues and witnesses it believed were relevant to complete the hearing based upon concerns and questions raised by the Commission during the June 12, 1997, hearing.

On July 1, 1997, U S WEST filed a letter setting forth its additional witnesses and the issues to be addressed by those witnesses. By Order dated July 7, 1997, the Commission scheduled a hearing to be held on July 16, 1997, and ordered that the letter submitted by U S WEST identifying additional witnesses and issues would be adopted. The Commission also ordered that an ex parte exhibit submitted to the Commission would be considered at that time. The hearing was held as scheduled. At the conclusion of the hearing, the parties agreed to submit proposed Findings of Fact and Conclusions of Law. U S WEST filed its Findings of Fact and Conclusions of Law on August 4, 1997.

On August 18, 1997, at its regularly noticed and scheduled meeting, the Commission considered whether, based upon the Commission's investigation of U S WEST's service quality performance, a second rate increase scheduled to be implemented at the end of 18 months from the first increase, may be implemented (in whole or in part), delayed or rejected and whether to approve the tariff revisions.

The Commission having considered the pleadings, evidence introduced at the hearings, arguments of counsel, and being fully advised, now makes and enters its Findings of Fact and Conclusions of Law as follows:

### **FINDINGS OF FACT**

1. U S WEST is a Colorado corporation providing local exchange telecommunications service, interexchange carrier access, intraLATA interexchange telecommunications services, and other telecommunications services throughout South Dakota.

2. On February 20, 1997, the Commission opened a docket to review U S WEST's service quality performance pursuant to the Commission's Order Approving Stipulation and Addendum in Docket TC94-121. In Docket TC94-121, the Commission approved a rate increase for residential and business basic local exchange service effective February 12, 1996, and also decided that a proposed second increase may be implemented at the end of 18 months from the first increase upon review of U S WEST's service quality performance. The Commission further directed Commission Staff to review U S WEST's service quality performance at the end of 12 months following the effective date of the increase.

3. AT&T and MCI filed Petitions to Intervene in TC97-016 which were granted by the Commission at its April 15, 1997, meeting.

4. On April 30, 1997, the Commission received a tariff filing by U S WEST that reflected the second phase of rate increases proposed by U S WEST to its Exchange and Network Services Tariff and its Exchange and Network Services Catalog; this filing was designated Docket TC97-049.

5. MCI and AT&T filed Petitions to Intervene in TC97-049 which were granted by the Commission at its June 3, 1997, meeting. The Commission also consolidated Dockets TC97-016 and TC97-049 at its June 3, 1997, meeting.

6. The program of investment to be made by U S WEST in network infrastructure that was approved in TC94-121 is as follows:

#### Time Frame for Capital Deployment

Type of Service	Capital Deployment	
	<u>Begin</u>	<u>End</u>
1. CLASS	1996	1997
2. Single Party Service	1996	2000
3. South Dakota Infrastructure Plan		
SMAS (Special Metallic Access Systems)	1996	1998
DACS (Digital Access & Cross Connect System)	1996	1999
SONET Multiplexers	1996	1998
Frame Relay	1996	1997
ATM Switches	1996	1997
Local Fiber Distribution	1996	1999
RSM (Remote Switch Modules)	1996	1997
Internet Service	1995	1996
4. Distance Learning	1996	1996

The estimated cost of these investments was approximately 25 million dollars.

7. The installation of CLASS services was completed in May 1997, approximately seven and one half months ahead of schedule. (Exhibit 1, pg. 12; Exhibit 2, pg. 4).

8. Single Party Service, which is to be completed by year-end 2000, began in 1996, and approximately 25% of the changeover will be completed by year-end 1997. (Exhibit 2, pg. 4; Exhibit 5, pg. 5).

9. The Special Metallic Access Systems (SMAS) which was to be deployed by 1998, was completed in 1997. (Exhibit 3, pg. 4; Transcript of June 12, 1997, hearing, pg. 228).

10. The Digital Access and Cross Connect System (DACS), which was to be added by year-end 1999, in Huron, Rapid City, Watertown, and Yankton, has been installed in Rapid City but not yet turned up. (Exhibit 2, pg. 4).

11. SONET Multiplexers, which were to be installed by year-end 1998, were completed in 1996. The SONET rings were tested both by U S WEST technicians as well as a flood in March 1997. The technology worked in both cases. (Hearing Transcript of July 16, 1997, pg. 9; Exhibit 5, pg. 6; Exhibit 11).

12. Frame Relay, which was scheduled for deployment by year-end 1997, was completed in 1996. (Exhibit 1, pg. 12; Exhibit 2, pg. 5).

13. ATM Switches are due for completion by year-end 1997, which is in accordance with the Investment Plan. (Exhibit 1, pg. 12; Transcript of June 12, 1997, pg. 229).
14. The local fiber distribution installation is to be completed by 1999. Engineering and installation of the fiber has begun in Watertown. (Hearing Transcript of June 12, 1997, pg. 105; Exhibit 2, pg. 5).
15. The Remote Switch Modules (RSM) are to be placed in Redfield and Mitchell by year-end 1997, in accordance with the Investment Plan. (Exhibit 2, pg. 5; Hearing Transcript of June 12, 1997, pg. 229).
16. Internet service was deployed in all U S WEST exchanges by year-end 1996, in accordance with the Investment Plan. (Exhibit 2, pg. 5; Hearing Transcript of June 12, 1997, pg. 229).
17. The Distance Learning Initiative was available to 36 school districts. This initiative provides for U S WEST to make \$1.7 million available to public schools in its exchange territory. As of May 28, 1997, 19 school districts had the work completed, 5 were scheduled for work, 11 were pending, and one district declined participation. U S WEST had donated 2,774 labor hours of services that were not charged against the investment plan. (Exhibit 1, pg. 13; Exhibit 2, pg. 5).
18. Commission Staff analyst Rislov testified that Staff did not identify any specific source of funding that was to be used by U S WEST to fund the investment plan and it was not contingent on any specific funding mechanism. (Hearing Transcript of June 12, 1997, pg.140).
19. The Stipulation and Addendum in Docket TC94-121 between Commission Staff and U S WEST which was subsequently approved by the Commission on January 8, 1996, does not provide that a price regulation plan was granted in return for U S WEST's participation in the investment plan. (Exhibit 7).
20. The Commission has reviewed U S WEST's service quality performance at the end of 12 months from the effective date of the first increase.
21. Commission Staff analyst Harlan Best summarized U S WEST's monthly quality of service using a methodology previously agreed to by Staff and U S WEST in Docket TC94-121. The Commission however had rejected this methodology in Docket TC94-121 and this fact was acknowledged by witness Best. (Hearing Transcript of June 12, 1997, pgs. 170-180, filed under seal due to confidentiality; Exhibit 3 with Attachments A and B, filed as Confidential pursuant to ARSD 20:10:01:39 et seq.)
22. Even using the rejected methodology, overall quality of service has deteriorated. (Hearing Transcript of June 12, 1997, pgs. 170-180, filed under seal due to confidentiality; Exhibit 3 with Attachments A and B, filed as Confidential pursuant to ARSD 20:10:01:39 et seq.)

23. U S WEST had more outages and more lines affected by those outages in 1996, than in 1995. (Exhibit 6, Attachment A, filed as Confidential pursuant to ARSD 20:10:01:39 et seq.)

24. Consumer contacts received by the Commission regarding U S WEST went up substantially for 1996, when compared to 1995, if the contacts regarding the issue of Black Hills extended area service were removed from the 1995 numbers. (Hearing Transcript of June 12, 1997, pgs. 200-201; Exhibit 6, Attachment E).

25. Sixty-seven (67) complaints were received by the Commission for missed commitments by U S WEST to residential customers in 1996, as compared to 79 in 1995; 30 complaints were received by the Commission for missed commitments by U S WEST to business customers in 1996, as compared to 21 in 1995. (Exhibit 6, Attachment F).

26. As provided in Docket TC96-174, the Commission took judicial notice of the complaint proceedings and its determination that U S WEST failed to take the necessary steps to provide service to Cathy Feickert in a timely manner. U S WEST was held liable to Cathy Feickert for damages sustained due to U S WEST committing an unlawful or unreasonable act, rate, practice, or omission by not providing service to her in a timely manner.

27. The Commission received 62 complaints in 1996, regarding service repair reports for residential customers as compared to 26 complaints in 1995; the Commission received 12 complaints for service repair reports for business customers in 1996, as compared to 5 complaints in 1995. (Exhibit 6, Attachment G).

28. The Commission's Director of Consumer Affairs, LaNiece Healy testified that on a comparative basis, the number of complaints received by the Public Utilities Commission regarding missed commitments and service repair problems should be significantly fewer than those received by U S WEST. (Hearing Transcript of June 12, 1997, pgs. 203-204).

29. The Commission's Director of Consumer Affairs, LaNiece Healy further testified that response times, turnaround times, and results that she observed in her dealings with U S WEST as Director of Consumer Affairs for the Public Utilities Commission, have not improved over the last couple of years. (Hearing Transcript of June 12, 1997, pg. 207).

30. U S WEST failed to adequately maintain its SLC-96 system serving the Junius exchange causing customers to be without telecommunications services on at least 3 occasions. (Hearing Transcript of June 12, 1997, pgs. 230, 236, 237, 248, 254; Exhibit 5, pg. 7).

31. U S WEST did not have sufficient trunking capacity in the Sioux Falls exchanges in the summer and fall of 1996, causing slow dial tone and blocked calls for customers in those exchanges. (Exhibit 5, pg. 8).

32. The Commission finds upon its review of U S WEST's service quality performance, that the performance of U S WEST is unsatisfactory based upon the foregoing Findings of Fact.

33. Pursuant to the Stipulation and Addendum approved by the Commission on January 8, 1996, the Commission grants an increase of ninety (90) cents to the business lines and trunks as identified in TC97-049 to reflect the second portion of the charge for touchtone service.

34. Pursuant to the Stipulation and Addendum approved by the Commission on January 8, 1996, the Commission grants an increase of ninety (90) cents to the public access line service as identified in TC97-049 to reflect the second portion of the charge for touchtone service.

35. Pursuant to the Stipulation and Addendum approved by the Commission on January 8, 1996, the Commission grants an increase of sixty (60) cents to the residential rates as identified in TC97-049 to reflect the second portion of the charge for touchtone service.

36. Based upon the Commission's review of U S WEST's service quality performance, the Commission denies the remainder of U S WEST's proposed second increase to residential rates as identified in TC97-049.

37. The Commission disapproves the proposed revisions to U S WEST's Exchange and Network Services Tariff as filed in TC97-049.

38. The Commission rejects the proposed Findings of Fact and Conclusions of Law submitted by U S WEST.

Based on the foregoing Findings of Fact, the Commission now makes the following:

### **CONCLUSIONS OF LAW**

1. That the Findings of Fact set forth above have been established by plain, clear and convincing evidence.

2. The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26, 49-13 and 49-31.

3. The Stipulation and Addendum in Docket TC94-121 between Commission Staff and U S WEST which was subsequently approved by the Commission on January 8, 1996, does not provide that a price regulation plan was granted in return for U S WEST's participation in the investment plan.

4. The Commission finds that upon its review of U S WEST's service quality performance that the proposed second rate increase to residential local exchange services in excess of the \$0.60 charge for touchtone service, scheduled to be implemented at the end of 18 months from the first increase, shall not be approved.

5. Pursuant to the Stipulation and Addendum approved by the Commission on January 8, 1996, the Commission grants an increase of ninety (90) cents to the business local exchange service and PBX Trunks as identified in TC97-049 to reflect the inclusion of the second part of the charge for touchtone service.

6. Pursuant to the Stipulation and Addendum approved by the Commission on January 8, 1996, the Commission grants an increase of ninety (90) cents to the Public Access Line service, as identified in TC97-049, to reflect the inclusion of the second part of the charge for touchtone service.

7. Pursuant to the Stipulation and Addendum approved by the Commission on January 8, 1996, the Commission grants an increase of sixty (60) cents to residential local exchange services, as identified in TC97-049, to reflect the inclusion of the second part of the charge for touchtone service.

8. The Commission disapproves the proposed tariff revisions to U S WEST's Exchange and Network Services Tariff as filed in TC97-049.

9. The Commission rejects the proposed Findings of Fact and Conclusions of Law submitted by U S WEST.

Pursuant to SDCL Chapter 1-26, the Commission hereby enters its final decision in this matter. It is therefore

ORDERED that pursuant to the Stipulation and Addendum approved by the Commission on January 8, 1996, the Commission grants an increase of ninety (90) cents to the business services proposed to be revised in TC97-049 to reflect the inclusion of the second part of the charge for touchtone service; it is further

ORDERED that pursuant to the Stipulation and Addendum approved by the Commission on January 8, 1996, the Commission grants an increase of ninety (90) cents to the Public Access Line service proposed to be revised in TC97-049 to reflect the inclusion of the second part of the charge for touchtone service; it is further

ORDERED that pursuant to the Stipulation and Addendum approved by the Commission on January 8, 1996, the Commission grants an increase of sixty (60) cents to the residential local service rates proposed to be revised in TC97-049 to reflect the inclusion of the second part of the charge for touchtone service; it is further

ORDERED that based upon the Commission's review of U S WEST's service quality performance, the Commission denies the remainder of U S WEST's proposed second increase to the residential rate; it is further

ORDERED that the Commission disapproves the proposed tariff revisions to U S WEST's Exchange and Network Services Tariff as filed in TC97-049; it is further

ORDERED that U S WEST, because of the tariff revisions necessitated by this Order, shall file tariff revisions to its Exchange and Network Services Tariff to reflect the Commission's order.

Pursuant to SDCL 1-26-32, these Findings of Fact and Conclusions of Law and Order Denying Tariff Revisions; and Notice of Entry of Order become effective 10 days after the date of receipt or failure to accept delivery of the decision by the parties.

### NOTICE OF ENTRY OF JUDGMENT

PLEASE TAKE NOTICE that these Findings of Fact and Conclusions of Law and Order Denying Tariff Revisions; and Notice of Entry of Order, in consolidated Dockets TC97-016 and TC97-049 were duly entered on the 27<sup>th</sup> day of August, 1997, and filed in the Commission's Docket.

Dated at Pierre, South Dakota, this 27<sup>th</sup> day of August, 1997.

<b>CERTIFICATE OF SERVICE</b>	
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.	
By:	<u>Melanie Keels</u>
Date:	<u>8/28/97</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

James A. Burg  
JAMES A. BURG, Chairman

Pam Nelson  
PAM NELSON, Commissioner

Laska Schoenfelder  
LASKA SCHOENFELDER, Commissioner