

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

**IN THE MATTER OF U S WEST) ORDER DISMISSING SHOW
COMMUNICATIONS, INC. AND ITS ABILITY) CAUSE PROCEEDING
TO SERVE SOUTH DAKOTA CUSTOMERS) TC97-192**

On December 12, 1997, the Public Utilities Commission (Commission) received a Petition for Order to Show Cause (Petition) from Commission Staff. The Petition requested that the Commission issue an Order to Show Cause ordering U S WEST Communications, Inc. (U S WEST) to appear before the Commission and demonstrate its financial, managerial and technical ability, produce corporate and personal records, and show cause why one or more remedies, as listed in the Petition, should not be imposed on U S WEST.

On January 8, 1998, the Commission received a response from U S WEST to the Petition. At its January 8, 1998, meeting, the Commission listened to arguments concerning the Petition from Staff Attorney, Camron Hoseck, and U S WEST Attorney, William Heaston. The Commission deferred action at that meeting.

At its January 20, 1998, meeting, the Commission again considered the Petition. The Commission voted unanimously to accept Staff's Petition and issue an Order to Show Cause with the following possible additional remedies: that U S WEST be ordered to improve its planning and provisioning in growth areas; that U S WEST be ordered to provision, in a timely manner, adequate and reliable service; and that U S WEST be ordered to upgrade obsolete and non-functioning infrastructure. A procedural schedule was listed in the Order to Show Cause.

On February 10, 1998, the Commission amended its Order to Show Cause and ruled on discovery requests. On February 10, 1998, U S WEST filed a Motion for Continuance. U S WEST requested that the dates for prefiled testimony and the hearing be modified due to U S WEST's need to conduct discovery. On February 17, 1998, U S WEST filed a Motion to Amend Order to Show Cause; Motion to Preclude Staff from Participating in Hearing; and a Motion to Dismiss. On February 19, 1998, Staff filed its response to the Motions of U S WEST. On February 19, 1998, U S WEST filed a Motion to Quash and an Amended Motion for Continuance. On February 24, 1998, the Commission granted a continuance and suspended the procedural schedule. On February 27, 1998, U S WEST filed a Notice of Appeal in Circuit Court. On March 2, 1998, U S WEST filed a Motion to Stay Agency Proceedings in Circuit Court. On March 23, 1998, the Circuit Court denied U S WEST's Motion to Stay Agency Proceedings.

At its April 6, 1998, meeting, the Commission considered how to proceed in this matter. The Commission has jurisdiction over this matter pursuant to SDCL 49-2-1, 49-2-2, 49-2-4, 49-13-4, 49-13-5, 49-13-13, 49-13-17, 49-31-3, 49-31-7, 49-31-7.1, 49-31-10, 49-31-11, 49-31-38, 49-31-38.1, and 49-31-38.2 and ARSD 20:10:01:45. The Commission

voted to dismiss the Order to Show Cause. The Commission found that new laws, that will be effective July 1, 1998, will provide the Commission with a new and improved vehicle to use in carrying out the Commission's original objectives of improving South Dakota's telecommunications infrastructure, ensuring proper infrastructure maintenance, ensuring the timely provisioning of service, improving service quality, and enhancing network reliability. The Commission also voted to open a docket to receive public comments regarding these objectives. The Commission found that the public input could be used by the Commission in its development of proposed telecommunications rules. (Commissioner Schoenfelder, dissenting.)

It is therefore

ORDERED, that the Order to Show Cause is dismissed and this docket is closed; and it is

FURTHER ORDERED, that a docket shall be opened to receive public comments and hold public meetings regarding issues concerning telecommunications services in order to assist the Commission in proposing telecommunications rules.

Dated at Pierre, South Dakota, this 28th day of April, 1998.

CERTIFICATE OF SERVICE	
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>Walter Kelbo</u>
Date:	<u>4/29/98</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

LASKA SCHOENFELDER, Commissioner,
dissenting

I respectfully dissent from the majority decision. One of the principal missions of the Commission is to assure that South Dakota citizens have communications, services and infrastructure of the highest quality possible. Commission Staff apparently believed that there were serious questions about some areas of U S WEST Communications' service quality performance and about the availability and reliability of the communications network. I believe that the Show Cause proceeding was an opportunity to bring U S WEST to the table and to examine the South Dakota operations of the company as a whole. The company would have had the right and the opportunity to demonstrate its performance in a positive light without interventions from other companies. Whatever procedures are used, there will be enormous implications for agriculture, education and business in this state, now and in the future. By dismissing this docket, we will be using an alternative procedural vehicle that may result in a decision that is so watered down, it will have no meaningful results. Both South Dakota consumers and U S WEST could have benefited from the existing Show Cause proceeding.

