

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF U S WEST COMMUNICATIONS, INC. AND ITS ABILITY TO SERVE SOUTH DAKOTA CUSTOMERS))))	ORDER CONCERNING MOTION TO AMEND AND MOTION FOR DISCOVERY TC97-192
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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 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 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.

On January 29, 1998, the Commission received a Motion and Notice of Motion to Amend Order to Show Cause (Motion to Amend) from Commission Staff. The Motion to Amend requested that a typographical error be corrected in the paragraph numbered 4 on page 7 by replacing the words "paragraph 2, above" with "paragraph 3, above." The Motion to Amend further requested that the order be amended to say that Commission Staff "may" file prefiled testimony as opposed to "shall" file prefiled testimony in order to allow Staff to call witnesses from the public.

On January 29, 1998, the Commission also received a Motion for Discovery and Request for Expedited Ruling (Motion for Discovery) from U S WEST. In its Motion for Discovery, U S WEST requested that the Commission issue Subpoenas Duces Tecum for the following people: Harlan Best; Gregory Rislov; Steven Wegman; Leni Healy; Tammi Stangohr; Bob Knadle; and William Bullard. The subpoenas requested certain documents and the taking of depositions of the above listed people. Commission Staff filed a resistance to the motion on February 2, 1998.

On February 3, 1998, at a duly noticed meeting, the Commission listened to arguments on the motions. On February 10, 1998, at a duly noticed meeting, the Commission ruled on the motions. The Commission granted Staff's motion to amend paragraph 4 on page 7 because it was a typographical error. The Commission further decided to amend its order with respect to prefiled testimony to allow members of the public to testify without filing prefiled testimony. However, the Commission ordered the Commission Staff to give U S WEST a list of those members of the public who will testify along with a short description of the subject matter of their testimony to U S WEST ten days prior to the hearing.

With respect to the Motion for Discovery, the Commission found that it would allow U S WEST to request from Commission Staff all documents and workpapers that were specifically relied upon by Staff to develop or support Staff's activity in this docket. The Commission also found that, based on Staff's Petition or Staff's prefiled testimony, U S WEST can also request any workpapers used by Staff to develop any numbers or other assertions by Staff made in its Petition or prefiled testimony. The Commission noted that the requesting of information of Staff by parties through data requests is consistent with past Commission practice. In addition, the Commission ruled that the Staff members who shall respond to these requests are the Staff members who worked as Commission Staff in this docket. As named by Staff Attorney Karen Cremer at the meeting, these Staff people are Harlan Best, Leni Healy, Charlie Bolle, and Tammi Stangohr.

On the issue of depositions, the Commission ruled that it will not allow depositions since the Commission is requiring prefiled testimony. The Commission noted that the use of prefiled testimony, and the limitation of direct testimony at a hearing to what is contained in that written testimony, has traditionally been used by this Commission in place of depositions and is designed to limit burdensome discovery in administrative appeals.

It is therefore

ORDERED, that Staff's motion to correct a typographical error is granted; and it is

FURTHER ORDERED, that the Commission's order will be amended to allow members of the public to testify without filing prefiled testimony but Commission Staff must give U S WEST a list of those members of the public who will testify along with a short description of the subject matter of their testimony to U S WEST ten days prior to the hearing; and it is

FURTHER ORDERED, that Staff shall give to U S WEST those documents as specified in the Motion for Discovery to the extent those documents were specifically relied upon by Staff in developing its case and U S WEST may request any workpapers used by Staff to develop any numbers or other assertions by Staff made in its Petition or in any prefiled testimony; and it is

FURTHER ORDERED, that U S WEST's request for depositions is denied.

Dated at Pierre, South Dakota, this 20th day of February, 1998.

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, JAMES A. BURG, Chairman in properly addressed envelopes, with charges prepaid

thereon.

By: _____

PAM NELSON, Commissioner

Date: _____

LASKA SCHOENFELDER,
Commissioner

(OFFICIAL SEAL)