

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

IN THE MATTER OF THE INQUIRY OF)	ORDER RECLASSIFYING
WHETHER TO RECLASSIFY U S WEST)	U S WEST'S INTRALATA
COMMUNICATIONS, INC.'S INTRALATA TOLL)	TOLL AND WIDE-AREA
AND WIDE-AREA TELEPHONE SERVICES)	TELEPHONE SERVICES AS
)	FULLY COMPETITIVE;
)	ORDER APPROVING
)	SETTLEMENT AGREEMENT
)	TC99-099

At its August 17, 1999, meeting, the Public Utilities Commission (Commission) voted to direct the Executive Director to open a docket to consider whether to have intraLATA toll and wide-area telephone services for U S WEST Communications, Inc. (U S WEST) reclassified from emerging competitive to fully competitive (Commissioner Schoenfelder, dissenting). Pursuant to SDCL 49-31-3.2, when determining how a telecommunications service is to be classified, the Commission shall consider the following:

- (1) The number and size of alternative providers of the service and the affiliation to other providers;
- (2) The extent to which services are available from alternative providers in the relevant market;
- (3) The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms, and conditions of service;
- (4) The market share, the ability of the market to hold prices close to the cost, and other economic measures of market power; and
- (5) The impact on universal service.

The Commission has jurisdiction over this matter pursuant to SDCL 49-31-3.2 and 49-31-3.4. Pursuant to SDCL 49-31-3.4, in any proceeding to reclassify a telecommunications service, the telecommunications company providing the service has the burden of proving that the classification is appropriate if the proceeding is commenced by the Commission on its own motion. On October 8, 1999, Sprint Corporation (Sprint) and Telecommunications Resellers Association (TRA) filed Petitions for Leave to Intervene. At its November 1, 1999, meeting, the Commission granted the requests for intervention. U S WEST filed testimony on October 22, 1999. The hearing was scheduled for November 22, 1999.

On November 3, 1999, the Commission received a Stipulation and Settlement Agreement entered into between U S WEST and Commission Staff. In the Stipulation and Settlement Agreement, U S WEST and Commission Staff agreed that U S WEST's

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TC 99-099

IN THE MATTER OF THE INQUIRY TO
RECLASSIFY U S WEST
COMMUNICATIONS INC.'S INTRALATA
TOLL AND WIDE-AREA TELEPHONE
SERVICES

STIPULATION AND
SETTLEMENT AGREEMENT

U S WEST Communications, Inc. ("U S WEST") and the Staff of the South Dakota Public Utilities Commission ("Staff"), collectively referred to as the "Parties," hereby state that they have resolved all issues relevant to the South Dakota Public Utilities Commission's inquiry whether to reclassify U S WEST's intraLATA toll and wide-area telephone services. The Parties respectfully submit this Stipulation and Settlement Agreement ("Stipulation" or "Agreement") for approval by the South Dakota Public Utilities Commission ("Commission").

I. RECITALS

A. On or about August 26, 1999, the South Dakota Public Utilities Commission by order initiated this docket to inquire whether to reclassify U S WEST's intraLATA toll and wide-area telephone services in Docket No. TC98-187 (In the Matter of the Petition for an Order Directing U S WEST Communications, Inc. to File Updates to its Exchange and Network Services Catalog, Access Service Catalog, Advanced Communications Services Catalog and Private Line Transport Services Catalog).

B. On September 23, 1999, the Commission electronically transmitted notice of the filing and the intervention deadline of October 8, 1999 to interested parties and entities. Timely petitions to intervene were filed by Sprint and the Telecommunications Resellers Association on or about October 8, 1999.

C. The Parties have engaged in settlement negotiations in an attempt to resolve any differences they may have regarding this docket. This Agreement reflects the results of those negotiations and resolves all of the issues which were or could have been contested among the Parties concerning this docket.

WHEREFORE, the Parties agree and stipulate to the following:

II. SPECIFIC PROVISIONS

The Parties agree that U S WEST's intraLATA toll and wide-area telephone services are fully competitive, and thus that such intraLATA toll and wide-area telephone should be reclassified from emerging competitive to fully competitive pursuant to SDCL 49-31-1.3 and 49-31-3.2 and ARSD 20:10:24:11 et seq. The factual basis for this agreement is set forth below.

III. FACTUAL BASIS FOR THIS AGREEMENT

A. Fully competitive services are defined in SDCL 49-31-1.3. SDCL 49-31-3.2 specifies that the Commission, in determining how a telecommunications service should be classified, shall consider the following:

- (1) The number and size of alternative providers of the service and the affiliation to other providers;
- (2) The extent to which services are available from alternative providers in the relevant market area;
- (3) The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms and conditions;
- (4) The market share, the ability of the market to hold prices close to cost, and other economic measures of market power; and
- (5) The impact on universal service.

B. U S WEST's intraLATA toll and wide-area telephone services are presently classified as emerging competitive services by Commission order dated November 2, 1992 in docket TC92-026 (In the Matter of the Investigation into the Reclassification of Telecommunications Services).

C. As set forth in the prefiled testimony of David Teitzel (at pages 4-6), there are numerous alternative providers of intrastate long distance services in South Dakota. There are currently at least 250 providers certified to offer intrastate long distance services in South Dakota. Further, a total of 25 carriers, in addition to U S WEST, elected to be included in the notice of intrastate dialing parity implementation and provide readily available alternatives to U S WEST's long distance services. In addition, U S WEST's records indicate that a total of 48 carriers are now actively serving South Dakota. These carriers include the three largest long distance carriers in the world, AT&T, Sprint and MCIWorldCom, as well as other long distance carriers of substantial scope and resources who are actively competing in South Dakota, such as GTE, Frontier and McLeodUSA. Some of these long distance carriers are also affiliated with one another, which affiliations influence these carriers' ability to serve the long distance market in South Dakota. These alternative providers have made themselves known to customers in South Dakota. They have spent millions of dollars in advertising their long distance offerings.

D. Further, as set forth in the prefiled testimony of David Teitzel (at pages 6-7), long distance services are available to South Dakota customers from at least 48 alternative providers, which alternative providers serve customers throughout South Dakota. Additionally, WATS services are currently available throughout South Dakota from, at a minimum, AT&T, MCIWorldcom and Sprint. Moreover, intrastate long distance services are also available from providers other than Interexchange Carriers, including Competitive Local Exchange Carriers

(CLECs) such as Dakota Telecom Group (DTG), Black Hills Fibercom, Northern Valley Communications, FirsTel and McLeodUSA. There are also long distance alternatives such as Internet telephone services, like Net2Phone Direct.

E. As set forth in the prefiled testimony of David Teitzel (at pages 8-9), these numerous alternative providers have the ability to make functionally equivalent or substitute long distance services readily available at competitive terms and conditions. Now that dialing parity has been implemented, all South Dakota customers now have the ability to preselect a specific carrier for their intrastate calling needs, and no longer must dial a special access code to reach that carrier, but may simply dial "1" and the telephone number. In the dialing parity environment, placement of intrastate long distance calls via an alternative carrier is functionally identical to the placement of that call with U S WEST. Moreover, intrastate services are readily available from alternative providers at competitive terms and conditions. There are numerous examples of intrastate long distance call prices that show that intrastate long distance services are now available to all South Dakota customers at rates, terms and conditions competitive with those offered by U S WEST.

F. With respect to market share, and as set forth in the prefiled testimony of David Teitzel (at pages 9-12), U S WEST's trend data suggest that the volume of measurable intrastate minutes passing through U S WEST's switches has declined by approximately 46% between January 1996 and July 1999. In addition, alternatives to U S WEST's network now exist to South Dakota customers for their intrastate long distance calling needs, such as private dedicated facilities, wireless services and Internet protocol telephony. The wide variety of traditional and non-traditional long distance competitors and bypass providers is now entrenched in South

Dakota, and competitive pricing, quality and the ability to package will be the primary drivers of competitors' ability to win, and retain, customers

G. Finally, as set forth in the prefiled testimony of David Teitzel (at page 13), reclassification of U S WEST's long distance services will stimulate additional competition in the intrastate long distance market and thereby increase downward pressure on prices. This competition is in keeping with the vision of affordable universal service.

H. For all the reasons set forth above, reclassification of U S WEST's intrastate long distance and WATS services is in the public interest for South Dakota customers.

I. The Parties stipulate that the prefiled testimony in this case may be reviewed by the Commission in considering this Agreement.

J. The Parties stipulate that U S WEST will continue to impute access charges to itself in providing intraLATA toll and wide area telephone services.

IV. GENERAL PROVISIONS

A. This Agreement is made for settlement purposes only. No Party concedes the validity or correctness of any regulatory principle or methodology directly or indirectly in this Agreement. Furthermore, this Agreement does not constitute agreement, by any Party, that any principle or methodology contained within this Agreement may be applied to any situation other than the above-captioned case in South Dakota. Notwithstanding, this Agreement does not preclude informal consultation by representatives of the Parties to consider using the same or a similar settlement approach in similar dockets in other states. No precedential effect or other significance, except as may be necessary to enforce this agreement or a Commission order concerning the Agreement, shall attach to any principle or methodology contained in the Agreement.

B. The Parties expressly reserve the right to advocate positions different from those stated in this Agreement in any proceeding other than the one necessary to enforce this Agreement or a Commission order concerning the Agreement. Nothing in this Agreement shall constitute a waiver by any Party with respect to any matter not specifically addressed in this Agreement.

C. This Agreement shall not become effective and shall be of no force and effect until issuance of a final Commission order approving it in its entirety or which contains modification(s) of the terms and conditions that are acceptable to all of the Parties hereto. In the event the Commission modifies this Agreement in any manner unacceptable to any Party hereto, that Party may withdraw from the Agreement and shall so notify the Commission and the other Parties within ten (10) days of the date of the order. In the event a Party exercises its right to withdraw from the Agreement, this Agreement shall be null and void and of no effect and no force in this or any other proceeding in South Dakota. Should the Commission reject the Stipulation, the Parties will proceed to litigate the entire matter before the Commission as if the Agreement had not been presented.

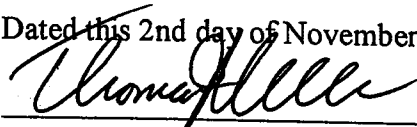
D. In the event this Agreement becomes null and void or in the event the Commission does not approve this Agreement, this document, as well as the negotiations or discussions undertaken in conjunction with the Agreement, shall not be admissible into evidence in these or any other proceedings or dockets.

E. The Parties state that the results of the compromises and settlements reflected in this Agreement are just, reasonable and in the public interest.

F. This Agreement may be executed in separate counterparts. The counterparts taken as a whole shall constitute the entire agreement.

Respectfully submitted,

Dated this 2nd day of November, 1999.

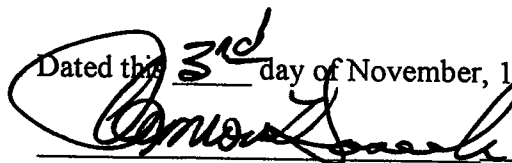


Thomas J. Welk
Boyce, Murphy, McDowell & Greenfield,
101 North Phillips Avenue, Suite 600
Sioux Falls, SD 57117-5015
(605) 336-2424

Alex M. Duarte
1801 California Street, Suite 5100
Denver, CO 80202
(303) 672-5871

Attorneys for U S WEST Communications,
Inc

Dated this 3rd day of November, 1999.



Camron Hoseck
Staff Attorney
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
Attorney for the Staff of the South Dakota
Public Utilities Commission