

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF)	
U S WEST COMMUNICATIONS, INC. FOR)	CASE NO. USW-S-96-5
AUTHORITY TO INCREASE ITS RATES AND)	
CHARGES FOR REGULATED TITLE 61)	
SERVICES.)	ORDER NO. 28862
)	

On August 23, 2001, the Commission Staff filed a Motion to re-open this case, the last rate case for U S West Communications, now Qwest Corporation, for a limited purpose. By its Motion, Staff asked the Commission to re-open the case to approve a Stipulation to Correct Toll Restriction Charges and to extend the terms of a final order issued in the case. The Commission grants the Motion to re-open the case and approves the Stipulation to Correct Toll Restriction Charges dated September 14, 2001.

The Commission issued Order No. 27785 in Case No. USW-S-96-5 on October 28, 1998. The Order approved a stipulation between Staff and Qwest that resolved litigation over toll restriction charges. Specifically, the Order and stipulation approved by it provide that “residential customers requesting toll restriction service [when] they initiate local service for the first time would not be charged the \$13.50 non-recurring fee on a single residential line.” The Order also proscribed recurring and non-recurring charges for toll restriction service to customers eligible for the Idaho Telephone Service Assistance Program (ITSAP).

In December last year, the Commission’s Consumer Division received a complaint regarding the high cost of initiating local telephone service with Qwest when a customer excludes long distance service. Toll restriction is available to customers to prevent use of the telephone for long distance calls, enabling the customer to avoid toll call charges. Qwest was charging customers a \$13.50 set-up fee for toll restriction service when they initiated service.

Qwest’s toll restriction set-up fee charged to new customers violates Commission Order No. 27785. A contested issue in Case No. USW-S-96-5 was whether toll restriction service should remain a Title 62 service, as Qwest advocated, or whether it should be a regulated Title 61 service, as Staff advocated. The parties eventually entered into a Stipulation and Settlement Agreement on September 2, 1998, which was approved by the Commission in Order

No. 27785. The Commission approved the Stipulation in part because, although it “allows toll restriction to remain a Title 62 service, it imposes strict conditions on the rates and terms under which the service is offered.” Order No. 27785 p. 6. As noted, the Stipulation disallowed the set-up fee for new customers.

The Stipulation also provided for a \$.25 monthly charge (reduced from \$2.00) to remind customers they are subscribing to toll restriction service. The Stipulation also, however, exempted certain customers from the recurring charge: “Customers eligible for Idaho Telephone Service Assistance Program (ITSAP) shall receive toll restriction without recurring or non-recurring charges.” Order No. 27785 p. 3.

The Commission in Order No. 27785 approved the Stipulation, saying it represented a reasonable compromise of the contested issues without an admission by either party that its position was not correct or was factually unsupported. The Commission, anticipating that competition would emerge in the local exchange market and the telephone industry would need less regulation, set the expiration date of the Order at the end of three years. Order No. 27785 p. 6.

Qwest acknowledges that it inappropriately charged new customers the \$13.50 toll restriction set-up fee when telephone service was initiated. Qwest initially reported to Staff that approximately 98,000 customers were charged the set-up fee after Order No. 27785 was issued, but after eliminating duplicate numbers in its records, Qwest determined approximately 90,000 customers were affected.

Staff also asked Qwest for verification that ITSAP customers were not charged the recurring toll restriction charge of \$.25. Staff requested 20 random bill statements of ITSAP customers who are toll restricted. On April 19, 2001, Qwest provided 20 randomly selected bill statements for ITSAP customers. Staff reviewed the bills and found 4 of the 20 were charged the monthly fee. Qwest subsequently identified 32 ITSAP eligible customers that were charged the \$.25 monthly fee.

As a result of Staff’s informal investigation, Qwest took corrective action, as set forth in a Stipulation to Correct Toll Restriction Charges dated August 22, 2001. On August 23, 2001, Staff filed its Motion to Reopen Case to Approve a Stipulation and Extend the Terms of an Order in Case No. USW-S-96-5. After filing its Motion, Staff learned from Qwest that the number of

affected customers was greater than stated in the initial Stipulation. A new Stipulation with revised figures was signed by the parties on September 14, 2001.

The Stipulation dated September 14, 2001 describes the corrective action already taken or agreed to by Qwest. First, Qwest corrected its service procedures as of February 12, 2001, to prevent further collection of improper toll restriction charges. Second, during June, July and August, Qwest refunded the toll restriction fee to 42,396 customers, an amount totaling \$572,346. Third, Qwest agreed to deposit to an account identified by the Commission the amount of fees it improperly collected but cannot refund to customers because the affected customer line has been disconnected or reassigned. That amount is \$643,639, representing fees on 47,677 lines. Fourth, Qwest provided refunds to 32 ITSAP customers for the improperly collected 25-cent monthly charges. Finally, Qwest stipulated to extend the terms of Order No. 27785 through calendar year 2002. A copy of the September 14, 2001 Stipulation is attached to this Order.

Upon review of Staff's informal investigation and the terms of the Stipulation to Correct Toll Restriction Charges dated September 14, 2001, the Commission approves the Stipulation. Pursuant to Rule 274 of the Commission's Rules of Procedure, IDAPA 31.01.01.274, the Commission may summarily accept settlement of a dispute that does not have significant implications for regulatory law or policy or for other utilities or customers. The Stipulation to Correct Toll Restriction Charges falls within that category. The settlement reached by Qwest and Staff resolves Qwest's violation of a Commission Order that does not affect other utilities, regulatory law or policy, and does not significantly affect customers.

In addition, the Commission finds the Stipulation to be reasonable, just and fair and in the public interest. By refunding fees to customers and returning funds to the Commission that cannot be refunded to customers, Qwest will not retain any fees it improperly collected. Extending the terms of Order No. 27785 through 2002 is a reasonable response to Qwest's failure to implement its terms after the Order was issued.

Leaving Order No. 27785 in effect through 2002 also serves another purpose. The Commission noted in that Order that "the Commission and/or the Staff may pursue the issue of whether toll restriction should be re-regulated as a Title 61 service" at the end of the three year effective period for Order No. 27785. Order No. 27785 p. 6. The Commission and parties hoped within that time "that competition would emerge in the local exchange market thereby

supplanting the need for the regulation of toll restriction service.” Vibrant competition has not emerged in the local exchange market during the past three years, however, and extending the terms of Order No. 27785 will provide additional time for evaluation of local competition and possible regulation of toll restriction service.

To summarize, the Commission finds the Stipulation to Correct Toll Restriction Charges dated September 14, 2001, to be fair, just, and reasonable, and the Commission hereby approves it. The terms of Order No. 27785 shall continue in force and effect through December 31, 2002. Qwest is directed to hold the amount of \$643,639 for deposit to an account as will be directed by the Commission. Interest shall accrue and be paid by Qwest at the same rate (currently 6%) applicable to interest on customer deposits. As this case was opened for the limited purpose of approving the Stipulation, this case can again be closed.

ORDER

IT IS HEREBY ORDERED that the Motion filed by Staff to re-open Case No. USW-S-96-5 is granted.

IT IS FURTHER ORDERED that the Stipulation to Correct Toll Restriction Charges dated September 14, 2001 is approved. Qwest is directed to hold the amount of \$643,639 for deposit to an account as will be directed by the Commission. Interest shall accrue and be paid by Qwest at the same rate (currently 6%) applicable to interest on customer deposits.

IT IS FURTHER ORDERED that the terms and conditions contained in Order No. 27785 shall be effective through calendar year 2002.

THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) or in interlocutory Orders previously issued in this Case No. USW-S-96-5 may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this order or in interlocutory Orders previously issued in this Case No. USW-S-96-5. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this
_____ day of September 2001.

PAUL KJELLANDER, PRESIDENT

MARSHA H. SMITH, COMMISSIONER

DENNIS S. HANSEN, COMMISSIONER

ATTEST:

Jean D. Jewell
Commission Secretary

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