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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 833

In the Matter of the Assessment of "Special
Construction Charges" by U S WEST
COMMUNICATIONS, INC.

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ORDER

At its January 21, 1997, public meeting the Public Utility Commission considered a recommendation from the Commission Staff (Staff) to direct U S West Communications, Inc., (USWC) to cease and desist from imposing special construction charges (SCCs), except as provided in its Network and Exchange Access Tariff. Staff's recommendation is set forth in the memorandum attached as Appendix A.

Based on the Staff memorandum and testimony received at the public meeting, the Commission issues the following:

FINDINGS OF FACT

At the public meeting, Staff reported that USWC is persisting in imposing special construction charges (SCCs) on its customers in violation of Commission Order Nos. 96-111, 96-128, 96-238, and 96-243. The SCC issue initially arose from complaints the Commission received from Internet service providers about USWC's practice of requiring them to pay SCCs before USWC would install service. At our public meeting on April 30, 1996, we concluded that USWC did not have an appropriate tariff in place to justify the charges in the manner in which they were being imposed. We ordered USWC to cease and desist its practice. *See* Order No. 96-128 at 1.

When we issued Order No. 96-128, USWC was relying upon its interpretation of its speculative projects tariff for authority to assess the SCCs. *Id.* at 2. We informed USWC that we disagreed with its interpretation of the tariff:

The language of the tariff indicates that USWC is attempting to protect itself from customer requests that impose "unusually financially hazardous" risks or customer requests that indicate "more than usual liability of loss." The tariff specifically allows the company to consider the particular circumstances of the customer. The tariff does not specify what conditions constitute financial risk. USWC has limited its inquiry under the statute (sic) to the type and square footage of the building. We have no evidence to indicate that USWC considers other factors such as the customer's financial resources, credit history, or other information that would mitigate concerns about loss.

We conclude USWC's practice is inconsistent with the terms of its tariff.

As a result, we ordered USWC to immediately cease and desist from requiring customers to pay SCCs exclusively based on the square footage and type of the customer's premises. *Id.* at 4. The order expressly directed USWC to install service to customers at the nonrecurring charges specified in its existing tariff, unless USWC could document that the customer's requested service actually presented more than the usual risk of loss. *Id.* On September 9, 1996, we reaffirmed our interpretation of the tariff when we issued Order No. 96-238. That order denied USWC's request for reconsideration of Order No. 96-128.

Order No. 96-128 also suspended USWC's proposed tariff that would have formalized its interpretation of its speculative projects tariff and opened a formal investigation into the SCC issue. On September 12, 1996, at USWC's request, we closed the docket. Order No. 96-243. USWC's letter requesting withdrawal of the tariff indicated that USWC was reevaluating its tariff proposal based on discussions with its customers. USWC expressed its belief that it could provide a filing at some later date that would be acceptable to its customers and would meet the company's objectives. The Commission has received no further filings regarding SCCs.

Since we issued Order No. 96-128, Staff has received five additional complaints indicating that USWC is continuing to assess SCCs based on criteria that are unrelated to the company's risk of recovery of its investment. One of those complaints came from a customer that we heard from last April. As was the case in UT 128, several of the complainants are Internet providers. There has been no evidence from any of the complaining customers that USWC is imposing construction charges because the customers impose more than the usual risk that USWC will not recover its investment. We adopt Staff's findings in Appendix A.

In meetings with Staff in December 1996, and January 1997, USWC informed Staff that its authority to impose SCCs may also be found in the Price List Tariff, Section 4.1.B.1. This tariff provides:

The Company will furnish, install and maintain all aerial or buried telephone facilities necessary to serve applicants or customers in accordance with its lawful rates, terms and conditions, and **with its established construction standards.** (Emphasis added.)

OPINION

We are concerned that USWC is continuing to impose SCCs, based on criteria that are not delineated in an approved tariff. Further, we are surprised to learn that USWC is continuing to impose such charges after we issued Order No. 96-128 and after the company indicated that it was working with its customers to develop an acceptable solution. The first indication that we had that USWC's discussions with its customers had failed to bear fruit was when these customers brought their concerns to us.

Our Order No. 96-128 was clear. USWC is not to impose SCCs except as expressly and unambiguously allowed by USWC's speculative projects tariff, Tariff P.U.C. Oregon 25, 4.6.A. As USWC knows, P.U.C. Oregon 25.4.6.A.2 describes two sets of circumstances. The first includes projects which are of an "unusually financially hazardous nature." Second, there are projects which are temporary "schemes," such as membership drives. We have no facts to indicate that the complaining customers fall into either of these categories.

Further, we reject USWC's argument that the price list tariff applies in this situation. The "established construction standards" language from Price List Tariff Section 4.1.B.1. refers to safety and reliability standards for construction, not to SCCs. In fact, the language referred to by USWC indicates that the company will install facilities necessary to serve customers in accordance with "lawful rates, terms, and conditions, *and* with its established construction standards." USWC has not identified any rates, terms or conditions that allow it to impose construction charges for the provision of facilities, other than Tariff P.U.C. Oregon 25, 4.6.A. Until it does so, it must cease and desist imposing these SCCs, except as provided in its tariff.

Our principal concern in this order is that USWC is imposing significant charges on its customers for construction costs without a valid tariff in place. This is an issue of significant concern to customers who are entitled to protection against unreasonable charges by the monopoly provider of telecommunications services. We remain willing to work with the company to address its concerns. However, until USWC has a proper tariff in place, it must cease and desist from imposing unauthorized construction charges on its customers.

A second concern is the apparent inconsistency in the treatment of customers and the lack of criteria for determining the amount of the charges. We quote from the Staff memo:

A disturbing part of the complaints is the apparent inconsistencies of when charges are assessed and how much is assessed. USWC did not assess SCCs for the National Computer Solutions installation. The reason given to Consumer Services Staff for reversing the proposed charges was the customers's long wait for service--approximately six months. Infostructure's SCCs are upheld by USWC, yet the original process to

request service was started one year ago and another request was made more than seven months ago. In addition, Infostructure provided Consumers Services Staff with a copy of a contract sent to it by USWC for SCCs in the amount of \$12,706.61. . . . The amount for the same construction charges provided to Staff by USWC is \$7,214.00 . . . , with no explanation for the difference in quotes.

If these facts are correct, they indicate that USWC may be engaging in undue discrimination in violation of ORS 759.260 et seq. This is a serious matter that requires immediate attention from the company. It is particularly serious since we already dealt with this problem last Spring. Had USWC followed our directive and pursued the investigation in UT 128, this matter could have been resolved. Instead, we have what appear to be serious violations of law and a construction charge process in disarray.

We issue this Order pursuant to ORS 756.515(1) and (4). USWC may request a hearing as provided under ORS 756.515(5).

ORDER

IT IS ORDERED that:

1. USWC shall not impose "special construction charges" (SCCs) except as provided in its Network and Exchange Access Tariff P.U.C. Oregon No. 25, 4.6.A.1 and .2.
2. Prior to imposing an SCC under P.U.C. Oregon No. 25, 4.6.A.2., USWC shall document its basis for imposing the charge. USWC shall send a copy of the documentation to the Commission's Staff on the same day that USWC informs its customer that the SCC will be imposed.
3. Should USWC request a hearing under ORS 756.515(5), any SCCs collected from customers shall be subject to refund.
4. Should USWC file and receive approval of a new SCC tariff, USWC may only impose SCCs under that tariff on customer orders placed after the tariff's effective date.
5. Pursuant to OAR 860-014-0094, USWC shall notify the Commission within 10 days of the effective date of this order whether the terms of the order are accepted and the time within which the order will be obeyed.

Made, entered, and effective _____.

Roger Hamilton

Chairman

Ron Eachus

Commissioner

Joan H. Smith

Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days

of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to ORS 756.580. A party may also ask the Commission for a hearing pursuant to ORS 756.515(5) to determine whether this order should continue in effect.

APPENDIX C

USWC's Network and Exchange Access Tariff PUC Oregon No. 25, 4.6.A.2

2. Speculative Projects

The provisions relative to speculative projects are intended to afford protection to the Company against loss in revenue from service furnished to subscribers engaged in projects of an unusually financially hazardous nature. Such projects include those involving oil wells, mining operations, stock or other promotion schemes, club membership or other drives, sales or election campaigns, resorts, and others of a similar nature. These provisions are also intended to afford protection to the company against loss from either residence or business services, which circumstances indicate to have more than usual liability of loss. The location where the service is to be furnished, the company's knowledge of a particular customer's activities, the information furnished by the customer, may all be considered in determining whether an account should be classified as speculative.

Each applicant for service may be required to pay to the Company in advance or otherwise, as the Company may elect, the net cost of installing and removing any facilities necessary in connection with furnishing of the service by the Company.

Each applicant for service may be required to deposit with the Company, before service will be furnished, a sum of money which the Company considers necessary to obtain adequate protection from loss of revenue, or to otherwise secure, in a manner satisfactory to the Company the payment of any bills which may accrue by reason of such service so furnished or supplied. P.U.C. Oregon No. 25, 4.6.A.2.