

Decision No. C99-222

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

DOCKET NO. 97A-540T

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IN THE MATTER OF THE APPLICATION OF U S WEST COMMUNICATIONS,  
INC. FOR SPECIFIC FORMS OF PRICE REGULATION

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DOCKET NO. 90A-665T

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THE APPLICATION OF THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH  
COMPANY DOING BUSINESS AS U S WEST COMMUNICATIONS, INC., FOR  
APPROVAL OF A FIVE YEAR PLAN FOR RATE AND SERVICE REGULATION AND  
FOR A SHARED EARNINGS PROGRAM

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**ORDER APPROVING STIPULATION WITH  
MODIFICATIONS**

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Mailed Date: March 10, 1999  
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**I. BY THE COMMISSION**

**A. INTRODUCTION**

1. This matter comes before the Commission for consideration of the Application for Specific Forms of Price Regulation filed by U S WEST Communications, Inc. ("USWC" or "Company") on October 31, 1997, and the related Stipulation and Settlement Agreement submitted by USWC, Commission Staff ("Staff"), and the Colorado Office of Consumer Counsel ("OCC") on October 29, 1998. USWC filed the application in reliance on the provisions of §§ 40-15-501 *et. seq.*, C.R.S. In its application, USWC requested comprehensive pricing flexibility for all its regulated retail services with the exception of residential and first line business basic local exchange.<sup>1</sup>

2. The Commission issued notice of the application and a number of parties intervened in this case including: Staff; the OCC; MCI WorldCom, Inc.; ICG Telecom Group, Inc.; Sprint Communications Company L.P.; Teleport Communications Group, Inc. of Colorado; the Colorado Telecommunications Association; the Telecommunications Resellers Association; and the Department of Defense and all other Federal Executive

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<sup>1</sup> With respect to residential and first line business basic local exchange, the application proposed to cap rates for those services at the levels existing at the time of submission of the application.

Agencies.<sup>2</sup> In accordance with prior orders in this case, we conducted hearings on USWC's application and related matters on May 26 through June 4, 1998, and June 24-25, 1998. The parties submitted Closing Statements of Position on August 17, 1998.

3. On October 29, 1998, USWC, Staff, and the OCC filed their Stipulation and Settlement Agreement accompanied by their Joint Motion to Accept Stipulation and Settlement Agreement. As discussed *infra*, the parties to the Stipulation requested that the Commission adopt that agreement as a complete disposition of this case. The Stipulation was not agreed to by all parties to this proceeding. In particular, the Joint Respondents<sup>3</sup> opposed the Stipulation for various reasons.

4. Pursuant to suggestions of the Joint Respondents, we issued public notice of the Stipulation and allowed interested persons additional opportunity to intervene in this case. ACI Corporation and NEXTLINK Colorado, L.L.C. intervened on November 20, 1998; McLeodUSA Telecommunications Services, Inc., intervened on November 23, 1998. In Decision No. C98-1190, we permitted all parties to file testimony regarding the Stipulation, and, specifically, on the issue whether the Commission should adopt the Stipulation as a complete resolution

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<sup>2</sup> As noted *infra*, NEXTLINK Colorado, L.L.C., ACI Corporation, and McLeodUSA Telecommunications Services, Inc. intervened after the Stipulation and Settlement Agreement was filed on October 29, 1998.

of this case. On January 14-15, 1999, we conducted additional hearings for the specific purpose of considering the Stipulation. Now being duly advised in the premises, we adopt the Stipulation and Settlement Agreement between USWC, Staff, and the OCC.

**B. Stipulation and Settlement Agreement**

1. On October 29 1998, USWC, Staff and the OCC offered their Stipulation and Settlement Agreement to resolve this case. On November 23, 1998, the parties submitted their amendment to Stipulation and Settlement Agreement. We refer to the Stipulation and Settlement Agreement and the Amendment to Stipulation and Settlement Agreement collectively as "Stipulation" or "Agreement." The Stipulation proposes a form of price regulation other than rate of return regulation for USWC. Under the Stipulation USWC would be granted: price flexibility between Commission determined floors and ceilings, contracting flexibility, the ability to bundle and package services, and continued quality of service regulation. In addition, the signatories recommend that the Commission initiate a rulemaking proceeding to determine the extent to which all jurisdictional telecommunications providers should be required to provide information to the Commission on the status and

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<sup>3</sup> MCI WorldCom, Inc., ICG Telecom Group, Inc., NEXTLINK Colorado, L.L.C., and McLeodUSA comprise the Joint Respondents.

development of competition in Colorado. The Stipulation also proposes specific rate and revenue reductions totaling \$84 million dollars annually for five years. On November 20, 1998, MCI WorldCom on behalf of its regulated subsidiaries; ICG Telecom Group, Inc.; NEXTLINK Colorado, L.L.C.; and McLeodUSA ("Joint Respondents") issued a joint response in opposition to the Stipulation and Settlement Agreement.

2. In accordance with the suggestions of the Joint Respondents, we issued notice of the Stipulation, allowed additional opportunity for intervention in this proceeding, and scheduled additional hearings for the specific purpose of considering whether we should adopt the Agreement. We conducted the additional hearing on January 14 and 15, 1999. At those hearings, USWC, Staff, and the OCC presented testimony in support of the Stipulation; the Joint Respondents presented testimony in opposition.<sup>4</sup> We will adopt the Stipulation and Settlement Agreement with only minor modification and clarification as a complete resolution of this proceeding. This order explains our rationale, addresses the Joint Respondents' comments and objections, and describes the clarification and modification approved here. A copy of the Stipulation and the Amendment to the Stipulation is attached to this Order.

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<sup>4</sup> The parties prefiled their direct testimony on January 8, 1999.

**C. Price And Service Quality Plan--Stipulation  
(Section III.)**

1. The Stipulation proposes a form of price regulation other than rate of return regulation for USWC. Under the proposed Price and Service Quality Regulation Plan ("PSQR") USWC would be granted pricing flexibility between Commission determined floors and ceilings, contracting flexibility, and the ability to bundle and package services, all subject to continued quality of service regulation.

2. Before discussing the specifics of the PSQR (or "Plan") the Commission notes that the parties to the Stipulation agreed that nothing in the PSQR plan is meant to supersede any flexible regulation already granted with respect to specific regulated services. The Commission concurs with this understanding.

**D. Pricing Flexibility**

**1. Introduction**

The first matter the Commission will address with regard to the PSQR plan is the threshold question of whether USWC should be granted price flexibility within Commission determined price floors and price ceilings.

**2. The Parties' Positions**

a. In their opposition to the Stipulation the Joint Respondents claimed that the primary concern of the

Commission, in reviewing the Stipulation, should be the protection of Colorado consumers through the promotion of vigorous competition. They further contended that many portions of the Stipulation will, " . . . cut competition off at the knees." Joint Response, page 3. The Joint Respondents also argued that, in the Stipulation, USWC seeks virtual deregulation of every retail service except for residential and first line business basic exchange, and "extraordinary" contracting flexibility. Joint Response, page 3.

b. In their testimony filed on January 8, 1999, the signatories took exception to these characterizations of the Stipulation. Mr. Bruce Smith, Director of the Colorado Public Utilities Commission, stated in response to the question whether he agrees with the contention of the Joint Respondents that the Agreement virtually deregulates retail services:

Absolutely not. First, there is no formal deregulation of any service, and there is no reclassification of any USWC service. USWC is bound by all Commission rules with some exception for waivers and variances that will carry forward. There are ceilings which protect consumers and floors which protect the competitive process. USWC is more stringently regulated under the Plan than the CLECs are regulated under the default scheme. If USWC is virtually deregulated as the CLECs assert, then the CLECs must be deregulated completely. Commission regulation of USWC under the Plan is less rigorous only with respect to pricing flexibility, a necessary step on the road to the statutory goal of the fully competitive marketplace for telecommunications services.

Direct Testimony of Bruce Smith, pages 26-27.

c. Dr. Neil Langland, also testifying on behalf of Staff, asserted in his Direct Testimony:

The Commission has employed the price band technique for over ten years for a variety of services. In fact, since the Costing and Pricing Rules became effective, the scheme for USWC services not subject to a specific form of relaxed regulation has been in effect a banded price scheme just like the one in the Agreement, except that under the Agreement there is less lead time necessary to change prices within the band, and greater contracting and bundling flexibility. Therefore, the change in regulatory scheme in the Plan is not a significant departure in terms of price listed services.

Direct Testimony of Neil Langland, page 4.

d. In addition, Mr. Kenneth Reif, Director of the OCC stated:

The OCC supports the Plan because it affords USWC with an appropriately limited degree of pricing flexibility commensurate with the level of developing competition in Colorado, protects consumers from unwarranted price increases and deterioration in service quality and is consistent with Colorado statutes and Commission rules.

Kenneth V. Reif Supplemental Testimony, page 3.

### **3. Commission Decision**

a. The Commission agrees with those parties who point out that little evidence of existing effective economic competition in Colorado's telecommunications markets was presented in this Docket. In light of this circumstance, the

Commission is sensitive to the potential effects on competition of our disposition of this case.

b. Much of the testimony in this Docket related to this question. For example, many parties argued that a lack of effective competition creates a circumstance, where in the absence of appropriate regulation, a firm with market power has the ability and self-interest to: raise prices above costs, "dump" a disproportionate share of its joint and common costs on captive customers, cross-subsidize competitive with non-competitive services, predatorily price, and construct other barriers to entry. The competing local exchange carriers ("CLECs"), the OCC and Staff raised these possibilities in response to USWC's original contention in this docket that price floors and ceilings were not a necessary part of the new form of regulation to be applied to USWC. The Commission agrees with this reasoning and finds that USWC's pricing flexibility must be constrained within Commission determined ceilings and floors to prevent potential abuses of market power.<sup>5</sup>

c. However, the Commission also agrees with the signatories to the Stipulation (e.g., the Direct Testimony of Mr. Smith cited above) that the Stipulation does not provide virtual deregulation of USWC's retail services. Rather, it

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<sup>5</sup> Other regulatory tools required to curb market power are cost support, cost allocation and quality of service standards.

requires a floor and ceiling for each and every service individually, including residential and business basic exchange. This regulatory scheme is very different from the virtual deregulation which USWC did, in fact, initially request here. In addition, as we discuss later in this order, we agree with the signatories' contention that the Stipulation provides a number of other regulatory mechanisms that will, in combination, act to curb USWC's market power and will ensure, among other things, that USWC does not price services in an anticompetitive manner. These regulatory mechanisms include: USWC's adherence to the costing and pricing rules, cost support, and constraints on USWC's contracting flexibility.

d. We also find that the imposition of price ceilings and floors on USWC is entirely consistent with the Commission's decisions in Docket No. 97R-177T, which created a default form of relaxed regulation with no price ceilings or floors for the CLECs. In those decisions, we premised our refusal to impose price ceilings on the CLECs on the continued availability to consumers of the price regulated services of USWC. In other words, the Commission found that USWC's prices would serve as an effective price ceiling on CLEC services. As an example, in Decision No. C98-46, pages 6-7, in denying the OCC's request for price ceilings for the CLECs, we stated:

The Commission reiterates that if the problems the OCC has identified do in fact emerge the Commission stands ready to address them forcefully. However, in our judgment, the imposition of price ceilings on the CLECS is in conflict with the promotion of effective competition at least as long as the price regulated services of USWC remain as an alternative for consumers.

e. Similarly, in denying Staff's request to impose price ceilings for the CLECs on residential basic service in Docket No. 97R-177T, we concluded:

The Commission denies this Staff request. The Commission believes its decision not to apply price ceilings and floors to the CLECs, even on the provision of residential basic exchange service, is consistent with the Commission's legislative mandate to encourage the emergence of a competitive telecommunications market in Colorado. Given current market conditions, USWC's prices will serve as an effective price ceiling on CLEC services. The Commission believes that CLEC price ceilings would be a needless and burdensome supplement to existing market incentives.

Decision No. C98-46, pages 8-9.

f. We conclude that the Stipulation's imposition of price ceilings and floors is consistent with the continuing need to curb USWC's market power and provide a constrained alternative to the CLEC offerings. We also conclude that the Stipulation's grant to USWC of price flexibility within Commission-determined price floors and ceilings is in the public interest. It is consistent with the Commission's statutory mandate to encourage the transition to competitive telecommunications markets in Colorado while protecting and

maintaining the wide availability of high-quality telecommunications services.<sup>6</sup>

**E. Price Ceilings (Section III.A.1 - 3)**

**1. Introduction**

a. The Stipulation addresses a number of procedural details with regard to price ceilings. These include how the initial price ceiling should be set (Section III.A.1), the circumstances and constraints on USWC's ability to change price ceilings (Section III.A.2), how USWC will be allowed to change price ceilings (Section III.A.2) and the role tariffs play in establishing both the price ceiling and the initial price list (Section III.A.3). These sections of the Agreement did not draw any objections in the testimony presented at the supplemental hearings. Therefore, we simply note our support of these proposed procedures relating to price ceilings.

b. The Commission will comment on two issues with regard to the proposed price ceilings. The first is the question whether the price ceiling for basic exchange service should include zone charges where applicable. The second is the

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<sup>6</sup> We also find that the PSQR plan is consistent with federal and state statutes and Commission rules as outlined in pages 4-7 of the Stipulation. The objections of the Joint Respondents that the Stipulation is inconsistent with statutes and Commission rules are dealt with in this order in discussion of individual sections of the Stipulation. The Commission rejects those objections and finds that the Stipulation does conform to Commission rules and statutes.

request of the Joint Respondents that USWC's price ceilings be adjusted to reflect changes in productivity and inflation.

c. In Decision No. C98-1252 we required responses from the signatories clarifying certain points in the Stipulation. The first clarification question posed by the Commission was whether the price ceilings for basic exchange service should include zone charges where applicable. The signatories' response was that they should. The Commission agrees and now clarifies that the price ceilings for basic exchange service will include zone charges where applicable.

## **2. Joint Respondents**

a. As stated above, the Joint Respondents requested that we impose a productivity offset factor and price indexing in any alternative form of regulation approved for USWC. Joint Response pages 2 and 30. In its Answer and Cross Answer testimony relating to USWC's application, the OCC did advocate productivity and inflation adjustments in the price regulation plan for USWC. However, in his Supplemental Testimony filed January 8, 1999 (page 4), Mr. Reif, explained why he believes that, even though the Stipulation does not contain such price indexing and productivity offsets, it does ensure that customers receive the benefits of competition in the form of lower rates:

[W]hile the Plan does not contemplate automatic annual reductions in rates to capture productivity gains, the proposed \$84 million in rate and revenue reductions ensures that customers receive the benefit of competition in the form of lower rates regardless of the degree of competition that actually develops in the near term.

b. Mr. Reif also referred to an analysis conducted by the OCC that was used to compare the revenue impacts on USWC of productivity offsets and price indexing versus the Agreement's proposed \$84 million annual reduction in USWC's revenues:

[W]e evaluated the impact on USWC's revenues over five years assuming the Commission adopted the OCC's proposed PSQR plan including a 4.5% productivity factor. We selected a 4.5% productivity factor as the starting point of our analysis because we believed it was at the upper end of what the Commission reasonably could be expected to approve, taking into account the disparate opinions of USWC's, OCC's, and Staff's experts regarding productivity. Assuming a 2 percent rate of inflation and a 4.5% productivity factor, Mr. Nelson estimated that USWC would experience approximately \$249 million in revenue reductions over the five year term. Based on this analysis Mr. Nelson determined that a \$45 million rate reduction over the five years yielded the same net present value as the 4.5 percent productivity factor. The Office used this analysis as one benchmark against which to judge the justness and reasonableness of the final \$84 million.

Reif Supplemental Testimony, page 10.

### **3. Commission Decision**

a. We note that the purpose of productivity offsets and price indices is to help ensure that consumers benefit from the efficiency gains stimulated by competition. We

are satisfied with Mr. Reif's explanations and believe that the \$84 million annual reduction in USWC's revenues does adequately ensure that consumers will benefit from the Stipulation. To the extent the Stipulation stimulates further competition, it will also ensure that customers automatically share in any further efficiency gains in the form of lower prices.

b. The Agreement also enables the Commission to review all proposed changes in price ceilings and does not prohibit the Commission from considering productivity offsets and price indexing in the future.<sup>7</sup> Should the Commission consider such actions in the future, the Stipulation does not prohibit the participation of any party in any such proceeding.

c. We therefore deny the suggestion of the Joint Respondents, and will not impose a productivity offset or price indexing on the regulatory scheme proposed by the Stipulation.

#### **F. Price Floors (Section III.A.4)**

##### **1. Introduction**

Price floors are designed to protect competitors from anti-competitive behavior by USWC. In response to USWC's original price regulation proposal in this case, all parties contended that the absence of price floors for USWC would harm competition. For example, in his Answer Testimony, ICG/WorldCom

witness Dr. Montgomery contended that the absence of any price floors or imputation tests in USWC's pricing flexibility proposal was, "in and of itself a fatal flaw."<sup>8</sup> Although the Stipulation specifies price floors for USWC, the Joint Respondents remain concerned about possible anti-competitive behavior by the Company. The issue of price floors is also entwined with the potential ability of USWC to deaverage its retail prices, and with the scope of the contracting flexibility granted to USWC by the Stipulation. See discussion *infra*.

## **2. Treatment of Shared Costs**

### **a. Joint Respondents**

(1) The Stipulation recommends (Section III.A.4.a) that the price floor be set at Total Service Long Run Incremental Cost ("TSLRIC") as described in Rule 4 CCR 723-30-2.45(a)-(d) in the Commission's

(2) Costing and Pricing Rules. However, the Joint Respondents raised important concerns as to whether the TSLRIC price floor for individual services should contain some portion of shared costs,<sup>9</sup> and whether (and how) the TSLRIC

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<sup>7</sup> The same is true for price floors.

<sup>8</sup> Montgomery Answer Testimony, page 12. Staff and the OCC raised similar concerns. See, for example, Answer Testimony of Staff witness Mr. Wendell Winger, pages 44,45; Answer Testimony of OCC witness Susan M. Baldwin, pages 81, 82.

<sup>9</sup> Mark L. Stacy, Cross Answer Testimony, on behalf of MCI, pages 4-5; William Page Montgomery, Cross Answer Testimony on behalf of ICG and WorldCom, pages 14-15.

price floor should include imputation. The Joint Respondents also asked the Commission to modify the Stipulation to require USWC to establish price floors for the services contained in the price list before we implement any pricing flexibility through such lists or any contracts.

(3) With regard to the first concern of the Joint Respondents, the signatories to the Stipulation do not believe that shared costs should be part of the TSLRIC price floor for any individual service, although they do acknowledge that the Costing and Pricing Rules require that the prices must be set so that total revenue from any group of services covers the TSLRIC for that group of services.<sup>10</sup> The Joint Respondents, on the other hand, believe that shared costs should be included in the price floors for individual services.

**b. Commission Decision**

(1) We will deny the request of the Joint Respondents to require USWC to include some portion of shared costs in the TSLRIC price floor for individual services. We agree with USWC, Staff, and the OCC that Rule 30 of the Commission's Costing and Pricing Rules requires that shared costs be covered by the revenues from a group of services, but does not specify that a certain allocation of shared costs be

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<sup>10</sup> Joint Responses to Order Requiring Responses Clarifying Stipulation filed January 8, 1999 by USWC, Staff and the OCC, Response to Question 2.

applied to any specific service. Therefore, the price floor for an individual service need not include a portion of shared costs. Since the Stipulation will allow USWC to lower the price of any particular service to its direct (TSLRIC) cost, the Commission, with the assistance of interested parties such as the CLECs, will be vigilant to the potential for cross-subsidies and predatory pricing on the part of the Company. With regard to that vigilance, the Stipulation (Section III.D, pages 14-15) provides:

Within six months following Commission adoption of the Agreement, US WEST shall provide Staff and OCC with nonrecurring and recurring rate/cost comparisons and TSLRIC cost studies for the services identified in Attachment B. The rate/cost comparisons shall contain: the USOC, the price, the quantities sold, and an estimate of the per-unit TSLRIC plus shared costs, and shall be updated annually. U S WEST shall update the supporting cost studies as required to ensure that no cost study is more than three years old and shall provide any such updates to Staff and OCC with its annual rate/cost comparisons.

(2) This type of cost support will aid the Commission in ensuring that the Company does not price services in an anti-competitive manner. Of course, in reviewing any USWC tariff/price list proposal, nothing in the Stipulation or the Commission's rules precludes the Commission from assigning shared costs to any price floor.

### 3. Imputation

#### c. Introduction

(1) The second question raised by the Joint Respondents is whether the TSLRIC price floor should include imputation and if so in what manner. The signatories believe that imputation is appropriate as required by Rule 4 CCR 723-30-4.1(f) and Rule 4 CCR 723-39-7.6.<sup>11</sup> The Joint Respondents believe that adherence to these rules alone will not result in imputation of unbundled network element ("UNE") prices in all instances in which such imputation is warranted.

(2) Various CLEC witnesses representing some of the same parties as comprise the Joint Respondents discussed the issue of price floors in their written and oral testimony relating to USWC's original application. For example, Dr. Montgomery filed Answer Testimony and Cross Answer Testimony on behalf of ICG and WorldCom. In his Answer Testimony (Exhibit S1, pages 8-12), he asserted that price floors are necessary and discussed the effect of UNE prices on USWC's ability to engage in a price squeeze or other predatory conduct. In his Cross Answer Testimony (Exhibit T, page 14) he recommended that price floors be established on the same cost basis as UNE prices. Ms. Notsund, on behalf of TCG, addressed these issues in her Cross

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<sup>11</sup> Joint Responses to Order Requiring Responses Clarifying Stipulation, Response to Question 3.

Answer Testimony Exhibit Z, pages 4-5. She claimed that price floors for services must include the total element long run incremental cost ("TELRIC") prices for each UNE used to provide the service, to avoid USWC price squeezes. Mr. Stacy on behalf of MCI also filed Direct Testimony addressing price floors. Exhibit U, pages 12-14. He claimed that, without a price floor restriction, USWC would have the ability to use price squeezes to prevent entry.

(3) The parties to the Stipulation believe that the Costing and Pricing Rules, including the imputation requirements, resolve any concerns with UNEs. For example, OCC witness Mr. Nelson discussed why price floors in compliance with the Commission's Costing and Pricing Rules were sufficient in his Cross Answer Testimony. Exhibit R, pages 10-17. Mr. Nelson claimed that the standards and methodology employed by the Costing and Pricing Rules were specifically designed to effectively prevent cross-subsidy and predatory pricing. Exhibit R, page 12.

(4) According to Staff witness Dr. Langland, "The plan does not extend appreciably USWC's ability to price below cost. Commission rules and the monitoring should provide a reasonable check on any such behavior." Direct Testimony of Neil E. Langland, January 8, 1999, page 5.

**d. Commission Decision**

(1) The Commission affirms that the imputation language in 4 CCR 723-39-7.6.2 is conceptually correct when it states that imputation is only necessary in the case of a monopoly bottleneck facility. The market power associated with bottleneck facilities requires imputation to protect competitors and consumers from market abuses such as price squeezes. On the other hand, we conclude that it is economically incorrect to require USWC to impute UNEs into its price floors when there is no bottleneck facility involved. Such a requirement would in effect produce a regulatorily induced price squeeze on USWC and make it difficult for USWC to compete with the CLECs.<sup>12</sup> This would mean less competition and fewer choices for Colorado consumers.

(2) The Commission realizes that the term "bottleneck monopoly" is not defined specifically in our rules. This term may be a contested issue in future proceedings. However, we are confident that it will be in the self-interest of each party to make its case as clearly and forcefully as possible in specific future proceedings, and the Commission will

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<sup>12</sup> According to USWC witness McDaniel, "If you begin to impute UNEs, to me, in that scenario, the customer has that easily available alternative; then you are putting me in a price squeeze, because I'm not free to go down to my direct cost." Transcript, January 14, 1999, pages 108-109.

be able to make informed decisions that are in the public interest.

#### **4. When The Price Floor Should Be Established**

##### **a. Joint Respondents**

(1) The third issue raised by the Joint Respondents is whether the actual price floor for each regulated retail service should be formally established at the beginning of the PSQR.

(2) Section III.A.4.b of the Stipulation recommends that the actual price floor not be formally established at the beginning of the plan. Rather, the Stipulation proposes that, at any time, any person may protest a proposed price list addition or modification, or may file a complaint asking the Commission to determine if a price is set below the appropriate floor. The Stipulation also proposes that USWC shall bear the burden of proof that the price it charges is at or above the price floor.

(3) The Joint Respondents contend that adopting the Stipulation would result in price floors that do not exist until someone challenges the price of a particular service (Joint Response, page 6), and that challenges to the TSLRIC price floors would consume too much time. Joint Respondents argue that, as a result, USWC will be able to foreclose or delay the development of effective competition.

Therefore, the Joint Respondents ask the Commission to modify the Stipulation to require USWC to establish price floors for the services contained in the price list before it implements any pricing flexibility through such lists or any contracts. Joint Response, page 8.

**b. Commission Decision**

The Commission denies the request to modify the Stipulation to require USWC to establish price floors for the services contained in the price list before it implements any pricing flexibility. We find that the Stipulation provides adequate safeguards since it provides that any person may protest a proposed price list addition or modification, or may file a complaint asking the Commission to determine if a price is set below the appropriate floor. Notably, the Stipulation requires that USWC, in the event of such challenges, bear the burden of proof that the price it charges is at or above an appropriate price floor. In addition, the Commission again notes that the Stipulation (Section III.D, pages 14-15) requires USWC, within six months following Commission adoption of the Agreement, to provide Staff and OCC with nonrecurring and recurring rate/cost comparisons and TSLRIC cost studies for the services identified in Attachment B. The Stipulation also provides that those rate/cost comparisons shall contain the USOC, the price, the quantities sold, and an estimate of the

per-unit TSLRIC plus shared costs, all to be updated annually. According to USWC witness McDaniel, these services cover about 90 percent of USWC's revenues.<sup>13</sup> This provision will give the Commission sufficient information to monitor USWC's prices for possible anti-competitive effects.

**5. Constraints On Challenges To Commission Orders  
(Section III.A.4.c.)**

**a. Introduction**

The signatories to the Stipulation agree that for six months following the date of a Commission final order upholding a price list addition or modification they will not challenge that order at the Commission. The Joint Respondents argued (Joint Response, page 6) that, as a result of this provision, the OCC and the Staff could not challenge the price of a particular service for at least six months after a price list filing.

**b. Commission Decision**

The Commission believes that a careful reading of the Stipulation does not support the Joint Respondents' contention. The Stipulation only precludes the Staff and the OCC from challenging a new price for six months after it has been approved by the Commission. Prior to Commission approval, either the Staff or the OCC may raise the

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<sup>13</sup> Transcript January 14, 1999, page 89.

question as to whether the proposed price is above the floor. We find that these provision are appropriate.

**6. Price Changes Between Ceilings And Floors  
(Section III.A.5.a & b.)**

The Stipulation also describes how prices are to be changed between ceilings and floors. These processes and procedures were unopposed by the Joint Respondents. Therefore, the Commission simply notes its agreement with these provisions.

**G. Deaveraging (Section III.A.5.c.)**

**1. Introduction**

a. In this section of the Stipulation the issue is whether the Commission should accept the proposal that:

Nothing in this Stipulation shall be construed as either granting or denying USWC authority to geographically deaverage rates or prices. During the term of this plan, US WEST may apply to the Commission for permission to establish a distinct price for each service provided in a specified geographic area.

**2. Joint Respondents**

The Commission will consider two requests of the Joint Respondents relating to this provision and the issue of deaveraging in general. First, on page twenty of the Joint Response, the Joint Respondents recommend that we deny USWC the ability to deaverage under the terms of the Stipulation. Second, if the Commission does allow USWC the ability to deaverage, the Joint Respondents request that the Commission modify the Stipulation to incorporate a requirement that USWC

impute its cost reductions into the prices USWC charges the CLECs for UNEs. Otherwise, according to the Joint Respondents, their ability to employ UNEs will be diminished. Specifically, the Joint Respondents contend that, since the Stipulation does not require USWC to impute its cost reductions in prices for UNEs, CLECs would be precluded from matching or beating USWC's targeted price decreases by providing service through UNEs purchased from USWC. The Joint Respondents claim that, unless the Stipulation is modified, the pricing flexibility provision in the proposed Stipulation will curb the entry of new providers. Joint Response, pages 9-10.

### **3. Commission Decision**

a. The Commission understands the Joint Respondents' concern with USWC's potential ability, under the terms of the Stipulation, to deaverage its retail rates in general and rates to large business customers in particular.

b. There are broad public interest concerns which accompany the general issue of rate deaveraging. For example, without an effectively competitive market, deaveraging may result in several negative consequences such as an inefficient pricing structure (prices greater than costs), the "dumping" of a disproportionate share of joint and common costs on captive customers, and the potential for cross-subsidy and predatory pricing. However, under the terms of the Stipulation,

any future USWC tariff/price list proposal would require Commission approval. Accordingly, the Commission will be able to take into account any potential negative impacts from any proposed deaveraging in making its decision. Therefore, we deny the request of the Joint Respondents and will not modify the Agreement to deny USWC the ability to propose deaveraged rates in the future.

c. With regard to the second request of the Joint Respondents, that the Commission modify the Stipulation to incorporate a requirement that USWC impute its cost reductions into the prices it charges the CLECs for UNEs, the Commission reiterates its belief that the Commission's costing and pricing and imputation rules will serve to protect the CLECs from abuses of market power by the Company. Therefore, we deny this request.

## **H. Contracting Flexibility (Section III.B)**

### **1. Introduction**

Section III.B of the Stipulation addresses the issue of contracting. The basic question is what limitations, if any, should be imposed on USWC's contracting flexibility. Generally, the Stipulation will grant USWC contracting flexibility "consistent" with the flexibility afforded to the CLECs by 4 CCR 723-38-3.2.2.4. Further, the Stipulation (pages

11-13) recommends eight categories of conditions to be imposed on the Company's contracting flexibility.

## **2. Joint Respondents**

a. The Joint Respondents claim that the Stipulation provides USWC with contracting flexibility "equivalent" to what is presently offered for CLECs. They contend that such contracting flexibility is not supported by the record and will harm the growth of competition. Joint Response, page 12. They also contend that the contracting provisions of the Stipulation permit USWC to deaverage its prices. Joint Response, page 18. Consequently, the Joint Respondents request that the Commission impose several additional limitations on USWC's contracting flexibility. First, the Joint Respondents contend that USWC should seek prior approval of its contracts by submitting redacted, unexecuted versions of the contracts to the Commission. Secondly, the Joint Respondents argue that USWC should file a statement setting forth the TSLRIC floor for each regulated service offering within the contract. Thirdly, the Joint Respondents ask the Commission to modify the Stipulation to include a limitation on the duration and penalty (for early termination) provisions allowed in USWC contracts. Lastly, the Joint Respondents again recommend that the Commission deny USWC the ability to deaverage rates. Joint Response, pages 16-20.

b. According to the Joint Respondents' witness Gillan, there are several problems with the Stipulation's language addressing price floors for individual customer contracts. Mr. Gillan contends that the Stipulation's reference (page 12) to an undefined customer-specific "TSLRIC" is an open invitation to discrimination. He claims that allowing USWC to establish prices based on an after-the-fact rationalization to a customer-specific TSLRIC would create a "regulatory quagmire of unprecedented dimension." Gillan Testimony, page 15. Mr. Gillan asks the Commission to modify the Stipulation to strike any reference to the use of "customer-specific" TSLRICs by the Company.

### **3. Commission Decision**

a. All the parties to this docket agreed that the market for large business customers is the market segment where competition is emerging the fastest. It is true that USWC still has most of this market. However, large business customers have alternatives and are probably well aware of them. Therefore, the Commission accepts the arguments of the signatories to the Stipulation that there is good reason to believe that the contracting flexibility granted to USWC is consistent with promoting more competition in the market for large business customers, and is, therefore, in the public interest.

b. We also agree with the view that USWC should be able to respond to CLEC competition for large business customers. Otherwise, USWC may lose large business customers based on regulatory constraints, instead of the real cost efficiencies of the CLECs. The contracting flexibility granted to USWC by the Stipulation is consistent with this position. Furthermore, USWC's contracting flexibility will be conditioned upon its offering contracts on a non-discriminatory basis within Commission determined price ceilings and floors. The Stipulation also allows the Commission to suspend and investigate any specific contract.

c. Therefore, the Commission denies the requests by the Joint Respondents for additional limitations on USWC's contracting flexibility. However, the Commission finds that some minor modifications are called for. Specifically, the Commission finds that any contractual provision relating to penalties for early termination of a USWC contract should be added to the confidential information to be attached by USWC to the notice of contract specified in Section III.B.5, pages 11-12 of the Stipulation. The Commission also finds that the provisions of Section III.B.7 pages 12-13 of the Stipulation, should be modified to require USWC to provide a copy of each complete contract to the Commission.

## **I. Packaging/Bundling (Section III.C.)**

### **1. Introduction**

This section of the Stipulation addresses the issue of packaging and bundling. The basic issue is how should packaging/bundling be handled for USWC. The Stipulation essentially treats the Company the same as the CLECs with the added constraints that the price USWC sets for the bundle or package shall be at the price ceiling (which is set at the sum of the price ceilings for the services within the bundle or package) or between the price ceiling and the appropriate price floor (which is set at the sum of the price floors for the services within the bundle or package). The Stipulation also provides that:

1. With any bundle or package, USWC will either satisfy the bill itemization requirements in Rule 4 CCR 723-2-10 or request a waiver of those requirements.
2. The Commission may suspend and investigate any tariff, price list, or price filed; USWC shall have both the burden of going forward and the burden of persuasion in any such investigation.
3. At any time, any person may protest a proposed price list addition or modification, or may file a complaint asking the Commission to determine if a price charged by USWC for the bundle or package of services is beneath the appropriate floor.

### **2. Joint Respondents**

The Joint Respondents complain that the packaging and bundling provisions of the Stipulation will result in anti-

competitive behavior by USWC. They suggest that we require USWC to seek prior Commission approval of all bundled and packaged offerings. Joint Response, pages 10-11.

### **3. Commission Decision**

The Commission is satisfied with the Stipulation's treatment of the packaging and bundling issue. In particular, the Stipulation allows the Commission to suspend and investigate any price, permits any person to protest any proposed price list addition or modification, and allows persons to file a complaint to determine if a price charged by USWC for any bundle or package of services is beneath the appropriate floor. These provisions will safeguard the public interest. Competition should work here to provide Colorado consumers with more choices, and under Commission rules, Colorado consumers will still have the option of purchasing existing services separately.<sup>14</sup> Therefore, the Commission denies the request of the Joint Respondents, and will not require USWC to seek prior Commission approval of bundled and packaged offerings.

#### **J. Cost Support (Section III.D)**

##### **1. Introduction**

This section of the Stipulation concerns the issue of cost support. Specifically, the issue concerns what type of cost support must USWC provide when it files a revised

price list to change a price, add a new regulated retail service, or propose a change to a price ceiling. On pages 14 and 15, the Stipulation describes the cost support agreed to by the parties.

## **2. Joint Respondents**

The Joint Respondents complain:

U S WEST does offer up an 'estimate' of TSLRIC for seventeen or so of its retail services after its prices have been in place for half a year. In light of the fact that Brian Johnson testified that US WEST sought pricing flexibility for 'thousands' of retail services, producing estimated TSLRICs 'per unit' that do not require updating any sooner than three years--and producing them only after the services have been offered to customers--the Stipulation is, at the heart, setting speculative price floors for a few services at best.

Joint Response, page 6. The Joint Respondents ask the Commission to modify the Stipulation to require USWC to establish price floors for the services contained in the price list before it implements any pricing flexibility through such lists or any contracts. Joint Response, page 8.<sup>15</sup>

## **3. Commission Decision**

a. The Joint Respondents' reference to "seventeen or so" services refers to the list contained in

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<sup>14</sup> Rule 57 of 4 CCR 723-1.

<sup>15</sup> The request of the Joint Respondents for the prior establishment of price floors was discussed earlier in this order. However, it appears again here because the Joint Respondents requested this relief separately to deal with the issue of contracts.

Attachment B to the Stipulation (although that list actually contains nineteen items). Each of these items, however, is actually a category of services into which many rate elements fall. Taken together, these categories represent the major services which USWC offers. Therefore, the comparison between "seventeen or so" and "thousands" is misleading. Moreover, the Stipulation's requirement that the cost studies in use be no more than three years old is consistent with our current Costing and Pricing Rules. See Rule 4 CCR 723-30-4(1)(h).

b. The Joint Respondents' request to modify the Stipulation to require USWC to establish price floors for the services contained in the price list before it implements any pricing flexibility through such lists or any contracts is, as noted above, denied. The Commission supports the Stipulation's provision (Section III.D.) regarding the type of cost support USWC must provide when it files a revised price list to change a price, add a new regulated retail service, or propose a change to a price ceiling.

## **K. Service Quality Plan**

### **1. Stipulation (Section III.E.1)**

The Stipulation provides for prospective, automatic remedies for noncompliance by USWC with specific service quality measures outlined in Attachment A to the

Agreement. It also establishes an overall maximum "at risk" incentive of \$15 million of bill credits per year, disaggregated into maximums for each measure. Noncompliant performance in any measure by USWC for two consecutive months, or any three months throughout the year, as a minimum, will cause the accumulation of a pro-rated bill credit for any and all months during the year in which noncompliant performance is observed. Furthermore, procedures for implementing the bill credits are outlined. Finally, the Stipulation proposes that any credits relating to carrier-to-carrier service quality measures ordered to be included in Attachment A shall be capped at \$2 million annually. The \$2 million cap will, in turn, include the \$900,000 associated with network reliability, switching, trunking, and toll network calling as referenced in Attachment A.

## **2. Joint Respondents**

The Joint Respondents are, in general, favorably disposed to the service quality component of the Stipulation; their only reservation relates to the treatment of carrier-to-carrier service quality measures. They claim that the Agreement is deficient in terms of the requirements concerning the quality of service to other carriers and that the \$2 million cap is inappropriate. Furthermore, they contend that USWC will be able to forestall competitive losses simply by providing poor quality

service with respect to facilities essential to its competitors and then pay less in credits than it would have otherwise lost to competition. As a result, the Joint Respondents request that the Commission modify the Stipulation to incorporate complete compliance with any standards and measures adopted in Docket No. 97R-153T, and to remove the \$2 million cap. To accomplish this goal, Mr. Gillan proposed specific language to insert into the Stipulation to clarify that the \$2 million cap does not represent an overall limit on USWC's financial exposure for violating carrier-to-carrier service quality measures.

### **3. Commission Decision**

We find that the Commission must continue to monitor USWC's service quality closely during this transition period in telecommunications, because high service quality is of great importance to USWC's customers, and because the market may not yet be competitive enough to ensure such high quality on its own. The Commission finds that the service quality portion of the Stipulation provides adequate scrutiny of USWC's performance through the Agreement's service quality standards, reporting requirements, and bill credits for failure to comply. Concerning the Joint Respondents' complaint, the Commission does not deem it necessary to amend the language of the Stipulation, but we clarify that the Agreement does not limit the total credits which may be required from USWC for violating carrier-

to-carrier service quality measures forthcoming from Docket No. 97R-153T. Finally, page 19 of the Stipulation, contains references to the signatories requesting "arbitration" by the Commission. As clarification, the Commission interprets "arbitration" as referring simply to the ordinary process by which parties petition the Commission to resolve disputes pursuant to the Commission's Rules of Practice and Procedure, 4 CCR 723-1.

**L. Docket No. 90A-665T**

**1. Stipulation (Section III.E.2)**

USWC agrees to increase its sharing amount in Docket No. 90A-665T by \$2.5 million, from approximately \$12 million to approximately \$14.5 million, thus resolving any remaining issues in this docket.

**2. Commission Decision**

The Commission finds this proposal, which elicited no opposition, to be beneficial to USWC customers and, therefore, should be adopted.

**M. Other Issues**

**1. Issues and Signatories' Positions**

There are three miscellaneous issues on which the Stipulation is silent, but which must be addressed in order to fully specify the new regulatory plan for USWC, namely: which services are affected by this regulatory plan; how should

promotional offerings be handled; and should there be a mid-term review of the plan. In response to Commission questions concerning these issues, the signatories answered the first by indicating that the plan should apply to all regulated retail services in USWC's tariff; Exhibit 59, according to USWC, Staff, and the OCC, provides a basic list of such services at the present. Regarding promotional offerings, the Stipulation is silent because the signatories do not intend that the current treatment be altered, or that any changes to that treatment which may occur as the result of pending or future advice letters be affected. Finally, no mid-term review is proposed by the signatories.

## **2. Commission Decision**

The Commission agrees with the signatories' positions on these issues. Exhibit 59 apparently includes USWC's current offerings of regulated retail services; none would be adversely affected by the possibility of downward price flexibility. The Commission realizes, however, that this list may change over the course of the plan as USWC offers new regulated retail services, and discontinues existing ones or has them deregulated. Concerning promotional offerings, the Commission sees no reason to alter, in this docket, the way in which such offerings are presently handled, as outlined in Section 2.2.11.B, Sheet 31 of USWC's Exchange and Network

Services Tariff. Finally, the Commission also finds no compelling reason for establishing a formal mid-term review process for the plan. While we acknowledge that telecommunications is in a period of transition and that regulation needs to monitor these changes closely, the Commission can do so by analyzing the information which will be provided by telecommunications carriers as the result of the forthcoming rulemaking referenced here, and by responding to problems if and when they appear.

**N. Rate Modifications, Foregone Rate Increases, and Capital Investment**

**1. Stipulation (Section IV) and Amendment to the Stipulation**

a. Section IV of the Stipulation sets forth a series of rate and revenue reductions which total \$84 million. These include:

(1) A change in USWC's toll and switched access rates resulting in a \$12 million revenue reduction for each category;<sup>16</sup>

(2) USWC's agreement to forego recovery of the \$12 million revenue impact associated with implementing the 303/720 rate center consolidation;

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<sup>16</sup> USWC has implemented this in Docket No. 98L-608T. See, Decision No. C98-1325, dated December 30, 1998.

(3) USWC's agreement to forego recovery of the \$8 million revenue impact associated with implementing rate center consolidation and/or expanded area service outside of the 303/720 area codes;

(4) a \$14 million bill credit to offset the charge to residential basic local exchange customers associated with the High Cost Support Mechanism ("HCSM");

(5) an \$8 million bill credit to offset the charge to business basic local exchange customers associated with the HCSM;

(6) USWC's agreement to forego recovery of up to an \$8 million revenue requirement associated with investments and expenses incurred to implement long-term local number portability (LNP); and,

(7) USWC's agreement to invest \$40 million to implement an expanded definition of basic service without recovering the \$10 million revenue requirement associated with this investment.

b. The Amendment to the Stipulation, on the other hand, contains the following provisions:

(1) Upon receipt of support from the HCSM, USWC will use one-third of this support each for the reduction of toll, switched access, and selected business basic exchange rates;

(2) After the reductions in switched access rates proposed elsewhere in the Stipulation and the Amendment, these rates may not be increased except through an advice letter with 30-day notice;

(3) Anyone may recommend other changes to switched access rates during the plan;

(4) USWC shall file interim switched access tariffs which result in a \$12 million revenue reduction;<sup>17</sup>

(5) USWC shall file permanent switched access tariffs slightly later;

(6) If the Commission suspends the permanent tariffs, the signatories agree to propose a particular, expedited schedule for the docket; and,

(7) Staff and the OCC agree not to oppose the way in which USWC implements toll rate reductions required by the Stipulation so long as USWC complies with the Agreement's pricing provisions.

## **2. Joint Respondents**

a. Most of the above provisions were uncontested. The Joint Respondents challenged only the bill credits offsetting USWC's charges to basic local exchange customers associated with the HCSM, and the treatment of the revenue requirement related to investments and expenses incurred

to implement long-term LNP. Concerning the HCSM, the Joint Respondents argue that USWC is able to offset its customers' charges from overearnings which it has generated from all of its customers, including the CLECs. The CLECs, on the other hand, are forced either to set higher prices for the HCSM, implement surcharges, or absorb the costs themselves. They see this situation as giving USWC an unfair competitive advantage on the grounds that it is neither nondiscriminatory nor competitively neutral. In their Joint Response, they propose that this inequity be addressed by requiring USWC to deposit some or all of its overearnings in the HCSM so that all carriers' customers can receive a line item reduction, not just USWC's. On the other hand, Mr. Gillan makes a somewhat different suggestion to address the same situation. He argues that, if USWC can afford to offset its customers' contributions to the HCSM by \$22 million, its share of that fund should be reduced by that amount. The result of adopting this suggestion would be that the amount collected from all carriers' customers would decline by \$22 million.

b. Turning to the LNP issue, the Joint Respondents interpret the Stipulation as giving USWC the right to recover any revenue requirement in excess of \$8 million

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<sup>17</sup> USWC has implemented this. See, footnote 13.

associated with investments and expenses incurred for the implementation of LNP. They contend that USWC could not obtain this right in either the LNP proceeding, Docket No. 96S-250T, or the Interconnection Cost Mechanism case, Docket No. 96A-011T, and that this provision violates the Federal Communications Commission's cost recovery authority over long-term LNP and state and federal requirements for competitive neutrality. Consequently, the Joint Respondents recommend that the long-term LNP provision be deleted from the Stipulation.

### **3. Commission Decision**

a. The Commission finds that this portion of the Stipulation, together with the Amendment, should be adopted with only minor clarification as discussed here. Since the telecommunications market in Colorado is in the process of moving toward greater competition, the need for a number of additional expenditures by USWC arises in order to facilitate that transition. The Commission believes that this part of the Stipulation and the Amendment provide the opportunity for these expenditures to be made and the resulting benefits to be realized, without the rate increases which USWC customers would otherwise have to bear. This attention to rate stability will be particularly beneficial to USWC's residential and small business customers who will most likely enjoy the fewest number of competitive alternatives. The Commission also finds that

USWC's customers gain from the fact that the benefits of these expenditures will be spread over many classes of customers and many areas of the state. Finally, even if similar savings were achieved through some other process, the Stipulation provides a mechanism through which the gains begin to accrue to USWC's customers immediately.

b. The Commission does not find either of the Joint Respondents' arguments persuasive. Concerning the HCSM issue, the Commission views the CLECs as having the same options as USWC. Specifically, the CLECs can either absorb the costs themselves or pass those costs on to their customers. Consequently, the Stipulation gives no particular competitive advantage to USWC.

c. As for the suggestion that USWC simply reduce its share of HCSM funds in order to benefit all customers, including those of the CLECs, we note: such an allocation of benefits would be inappropriate. USWC's entitlement to HCSM funds will be calculated according to existing Commission rules. Moreover, USWC's agreement to offset HCSM charges to its basic exchange customers (in an amount totaling \$22 million) is made in light of its own operations (e.g., accounting for USWC's revenues from the provision of services to its own customers). As such, any benefits resulting from USWC's agreement to forego rate increases (i.e., the \$22

million HCSM offset) are properly assigned to USWC customers only. With respect to the LNP issue, the Commission notes that the Stipulation (page 24) only indicates that USWC "may seek" recovery of any investments and expenses in excess of \$8 million, not that it will necessarily be granted this recovery. Since the Commission retains the authority to make that decision, we do not agree with the Joint Respondents that the LNP portion of the Stipulation provides USWC with a windfall gain, and, hence, should be deleted.

d. While the Commission accepts Section IV of the Stipulation and the entire Amendment as being in the public interest, we do so with certain clarification: on page 22, line 7 of the Stipulation, the reference to "price" for business basic local exchange service should be interpreted to mean "price ceiling". Only if the price ceiling is lowered will USWC customers be certain of realizing benefits from this reduction throughout the rest of the plan. Relying upon similar reasoning, the Commission will interpret "tariffed rates for toll service and switched access service" (page 23, lines 4-5) to mean "price ceiling for toll service and price<sup>18</sup> for switched access service," and "price" for business basic local exchange service on page 23, last line, to mean "price ceiling".

Finally, on page 26, line 6, the Commission interprets "basic local exchange service customers" to mean "business basic local exchange service customers" in order to make this reference compatible with that found on page 25, line 8.

**O. Miscellaneous Issues**

**1. Stipulation (Section V)**

a. Section V of the Stipulation discusses a series of miscellaneous issues related to the price and service quality plan presented in Section III. These include:

(1) USWC will be exempt from rate of return regulation and any phase I rate case for the duration of the plan.

(2) USWC will use an 11.25% return on equity whenever costs are at issue and 12% for financial reporting purposes.

(3) The plan will be in effect for at least five years and, at the end of the fourth year, USWC will file a report indicating whether it believes the plan should be extended beyond the end of the fifth year.

(4) The Commission should initiate a rulemaking docket to determine what information all

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<sup>18</sup> This reference is not changed to "price ceiling" for switched access service because price ceilings are only being established here for retail services; switched access is not a retail service.

jurisdictional telecommunications providers should be required to submit concerning competition in Colorado.

(5) USWC will be required to continue to provide reports ordered by the Commission, to continue to use Part 32 accounting, and to file reports related to the service quality component of the plan.

(6) All parties retain the right to recommend changes to the Commission's rules during the plan.

b. In addition to these issues, the signatories, in responding to a Commission question, agreed that the plan may be terminated before the end of five years. This could occur as a result of either a nonsignatory filing a complaint or the Commission initiating a show cause proceeding.

## **2. Commission Decision**

a. These positions were uncontested and the Commission finds Section V of the Stipulation to be in the public interest. In particular, the Commission realizes that telecommunications markets are gradually becoming more competitive and we intend to facilitate this emergence of competition whenever possible. Allowing greater earnings flexibility for USWC (e.g., by relaxing traditional rate of return regulation) will help to encourage it to provide an expanding array of affordable, high quality services to its customers.

b. Concerning the return on equity, USWC customers will benefit from the lower rate of 11.25% since it is the one used in USWC cost studies. These same customers will benefit as well from the higher rate of 12% for financial reporting purposes, since USWC will be able to use it to attract capital. In addition, it is this rate that is used to calculate the composite debt/equity rate of 10.11% that is, in turn, the basis for the determination of the interest accruing to USWC customers as the result of a number of the rate modifications in Section IV of the Stipulation.

c. The Commission approves of the length of the plan. It is sufficient to allow us to determine whether this new regulatory scheme is performing as intended, and whether the outcomes are beneficial to USWC, its customers, and the telecommunications sector in Colorado in general. Furthermore, this term is acceptable since there are mechanisms in place to terminate the plan before the end of five years if unintended, negative consequences arise.

d. Finally, the Commission realizes that emerging competition brings with it unavoidable uncertainty as to the precise nature of the Colorado telecommunications markets in the future. Monitoring this evolution of the relevant markets is an important role for regulators. Therefore, we will

establish a rulemaking docket to formalize the monitoring processes suggested in the Stipulation.

**P. Rule Waivers**

**1. Stipulation (Section VI.F)**

a. The Stipulation indicates that the signatories agree to the waiver of any rule for USWC to the extent such a waiver is necessary in order to implement the Agreement. In response to a question from the Commission, the signatories elaborated that no waivers are necessary for any rule other than Rule 4 CCR 723-30, and the waivers can be limited to those currently in effect in Docket No. 95A-363T and Rules 30-4.1(a) and 30-6.1(a).

**2. Commission Decision**

The Commission agrees with the signatories on this matter. The initial waivers for USWC from Rule 4 CCR 723-30 are discussed in Decision No. R95-1219, dated December 8, 1995, Docket No. 95A-363T. These were recently amended by Decision No. C99-13, dated January 6, 1999. The Commission has reviewed these waivers periodically over the last three years and has found them to be in the public interest; no reason exists to reach a contrary conclusion at this time. Rules 4 CCR 723-30-4.1(a) and 30-6.1(a) articulate the requirement that TSLRIC studies accompany every rate filing by USWC. Since the

Commission agrees here that this is no longer necessary, granting a waiver from these rules is in order as well.

**Q. State Action Antitrust Defense**

1. The Joint Respondents, through the testimony of Mr. Gillan, finally suggest that we adopt a statement clarifying that Commission approval of the Stipulation is not intended to grant State action immunity to USWC from operation of State and Federal antitrust laws. Indeed, Mr. Gillan suggests that we adopt a statement acknowledging that the Commission, in approving the Stipulation, does not engage in "active supervision" of USWC for purposes of any future antitrust actions against the Company. We decline to adopt these suggestions.

2. Whether USWC will be able to assert a "State action" defense in a future (and as yet unknown) antitrust lawsuit based upon Commission decisions associated with approval and implementation of the Stipulation is a matter for a court to decide in that lawsuit. No purpose would be served by our issuing a completely speculative statement on this matter at this time. As such, the Joint Respondents' request will be denied.

**R. Pending Motions**

At prior Weekly Meetings, the Commission orally granted various motions filed in this case. This order will

serve to now record those rulings: The Motion to Strike Supplemental Answer Testimony of William Page Montgomery filed by USWC on May 1, 1998 is granted; the Motion by the OCC to Present Rebuttal Testimony filed on May 15, 1998 is granted; the Motion to Strike Comments on Stipulation of the United States Department of Defense and all other Federal Executive Agencies filed by USWC on January 8, 1999 is granted; and the Joint Motion to Strike Portions of the Testimony of Joseph Gillan filed by USWC, Staff, and the OCC on January 12, 1999 is granted.

## **II. ORDER**

### **A. The Commission Orders That:**

1. The Stipulation and Settlement Agreement filed by U S WEST Communications, Inc., Commission Staff, and the Colorado Office of Consumer Counsel on October 29, 1998, and the Amendment to Stipulation and Settlement Agreement filed by those parties on November 23, 1998 are hereby adopted in full resolution of this proceeding consistent with the above discussion. Copies of the Stipulation and Settlement Agreement and the Amendment are attached to this order.

2. The Motion to Strike Supplemental Answer Testimony of William Page Montgomery filed by USWC on May 1, 1998; the Motion by the OCC to Present Rebuttal Testimony filed

on May 15, 1998; the Motion to Strike Comments on Stipulation of the United States Department of Defense and all other Federal Executive Agencies filed by USWC on January 8, 1999; and the Joint Motion to Strike Portions of the Testimony of Joseph Gillan filed by USWC, Staff, and the OCC on January 12, 1999 are granted.

3. The twenty-day period provided for in § 40-6-114(1), C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the Mailed Date of this decision.

4. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' DELIBERATIONS MEETING  
February 2, 1999.**

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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Commissioners

COMMISSIONER R. BRENT ALDERFER  
NOT PARTICIPATING, TERM EXPIRED.