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In the Matter of the Investigation Into the )	<u>DOCKET NO. 88-049-18</u>
Reasonableness of the Rates and Charges )	<u>ORDER ON MOTION OF U S WEST</u>
of the MOUNTAIN STATES TELEPHONE) )	<u>COMMUNICATIONS, INC., FOR PARTIAL</u>
AND TELEGRAPH COMPANY. )	<u>SUMMARY JUDGMENT ON PERIOD OF ANY REFUND</u>

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ISSUED: August 31, 1998

By the Commission:

The above-entitled matter having come on regularly for hearing on Thursday, August 13, 1998, at 9:00 a.m. before the Public Service Commission (Commission), on U S West Communications Inc.'s (U S West) Motion for Partial Summary Judgment on Period of Any Refund, U S West appearing through counsel, David J. Jordan and Gregory B. Monson, and the Utah Division of Public Utilities (Division) appearing through counsel, Michael Ginsberg, Assistant Attorney General, and the Committee of Consumer Services (Committee) appearing through counsel, Kent Walgren, Assistant Attorney General, and no other parties appearing in person or through counsel, and the Commission, having reviewed the pleadings of the parties on file herein and having heard the arguments of counsel, and being fully advised in the premises, hereby makes its following decision:

U S West filed its motion for partial summary judgment claiming that the potential period of any refund in this case could only run up to the filing of the general rate case, June 2, 1988, and not through the issuance of the final Order of the 1988 rate case, November 15, 1989, as the time from the filing of the rate case until its conclusion is the standard "regulatory lag". For the reasons set forth below, U S West's motion is denied.

This present case stems from the 1985 general rate increase case involving the predecessor in interest to U S West, Mountain States Telephone and Telegraph Company. The rate established in 1985 continued, with some adjustments, until a new general rate was established by Order dated November 15, 1989, in the 1988 rate case. Various ratepayers and others petitioned the Commission seeking refund of excess earnings. The Commission ruled that such would constitute retroactive ratemaking which they were forbidden from doing. In MCI Telecommunications Corp. v. Public Service Commission, 840 P.2d 765 (Utah 1992), the Supreme Court reversed that determination by the Commission and remanded the matter to the Commission with specific directions.

U S West's motion deals with the potential period of refund of excess earnings. Determining that potential period requires assuming that the ordinary ban on retroactive ratemaking cannot be asserted by U S West and that the earnings received by U S West exceeded its authorized rate of return and therefore were not just and reasonable. Therefore, the Commission is authorized and required to "look backward", determine what would be just and reasonable rates and earnings, and order relief as appropriate should those prior rates not be just or reasonable.

In the Supreme Court decision the Court did not indicate any limits to the potential period to which refunds may apply. Further, its language indicates that the appropriate period of potential refund would be any time that the rates or rates of return were not just and reasonable. In its discussion of Section II A of the opinion, involving the exception for extraordinary and unforeseeable expenses or revenues, the Court tracked the history in this case of a number of stipulated rate reductions. In the course of that discussion, the Court indicated that that process, in its three-step manner, allowed U S West to collect "excessive rates and earnings at least until all of the reductions finally went into effect," indicating that the rates and earnings were excessive and therefore subject to being refundable until actually changed by order of the Commission. In addition, the Court, in mandating factual findings by the Commission on remand, required the Commission to make findings concerning earnings, rate of return, and to the extent those earnings exceeded the

authorized rates for 1987, 1988, and 1989, further indicating the potential time of relevance.

Finally, the Court, in its conclusion at 840 P.2d 776, stated:

If the rates charged by U S West fall within an exception to the rule against retroactive ratemaking in this case, they are not just and reasonable...Accordingly, if on remand the Tax Reform Act of 1986 is found to have resulted in an unforeseeable and extraordinary decrease in expenses or if U S West is found to have engaged in misconduct, we hold that U S West's earnings, to the extent they exceed its authorized rate of return established in the 1985 general rate case, should be refunded to the U S West ratepayers. (emphasis added)

Thus, the period of potential refund is the period when the rates charged or rate of return received by U S West exceeded its authorized rate of return in the 1985 general rate case, which is the period of the effectiveness of that Commission Order. Therefore, the period of potential refund extends through November 15, 1989.

IT IS SO ORDERED.

DATED at Salt Lake City, Utah, this 31st day of August, 1998.

/s/ Stephen F. Mecham, Chairman

(SEAL) /s/ Constance B. White, Commissioner

/s/ Clark D. Jones, Commissioner

Attest:

/s/ Julie Orchard

Commission Secretary