

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Investigation Into the)
Reasonableness of the Rates and Charges)
of the MOUNTAIN STATES TELEPHONE)
AND TELEGRAPH COMPANY.)

DOCKET NO. 88-049-18
NOTICE OF HEARING ON
RELEASE AND SETTLEMENT
AGREEMENT

ISSUED: November 13, 1998

BY THE COMMISSION:

You are hereby given notice that the Commission will hold a hearing on approval of the Release and Settlement Agreement dated November 13, 1998 between the Division of Public Utilities, the Committee of Consumer Services and U S WEST Communications, Inc. commencing at 10:00 a.m. on Thursday, December 17, 1998, and continuing thereafter until completed, in Hearing Room No. 426, Heber M. Wells Building, 160 East 300 South, Salt Lake City, Utah, 84111.

In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during this hearing should notify Julie Orchard, Commission Secretary, at 160 East 300 South, Salt Lake City, Utah, 84111, (801)530-6713, at least three working days prior to the hearing.

I. AGREEMENT

On November 13, 1998, the Division of Public Utilities ("Division"), the Committee of Consumer Services ("Committee") and U S WEST Communications, Inc. ("U S WEST") jointly moved the Commission for approval of the Release and Settlement Agreement between the parties dated November 13, 1998 ("Agreement") and for entry of this order.

The Agreement provides for dismissal of this matter and all claims against U S WEST arising out of the earnings of its predecessor in interest, The Mountain States Telephone and Telegraph Company ("Mountain Bell"), in excess of its authorized rate of return on equity ("over earnings") in 1987, 1988 and 1989 based on U S WEST's agreement to refund \$50,000,000 to its customers in the form of monthly bill credits over a period of time currently estimated at somewhat less than three years. The manner of making the refund and determining the monthly credits against customer bills is set forth in the Agreement. The precise amount of the bill credits to each customer will be determined based upon the number of access lines in place following approval of the Agreement and based upon growth in the number of access lines during the term of the refund as provided in the Agreement. If the refund were based upon access lines as of August 1998 and if the number of access lines increases as currently anticipated during the term of the refund, the typical residential customer would receive a monthly bill credit of \$1.16 per line or a total of approximately \$40.00 over the term of the refund and a typical business customer would receive a monthly bill credit of \$2.04 per line or a total of approximately \$70.00 over the term of the refund.

Any person wishing to review the Agreement in its entirety may do so by contacting the Public Service Commission, 160 East 300 South, #400, Box 45585, Salt Lake City, Utah 84145-0585, Telephone: (801) 530-6716; the Division of Public Utilities, 160 East 300 South, 4th Floor, Box 146751, Salt Lake City, Utah 84114-6751, Telephone: (801) 530-6652; the Committee of Consumer Services, 160 East 300 South, #408, Box 146782, Salt Lake City, Utah 84114-6782, Telephone: (801) 530-6674; or U S WEST, 250 East 200 South, #1603, Salt Lake City, Utah 84111, Telephone: (801) 237-5906.

II. HISTORY OF CASE

- On December 31, 1985, the Commission issued its Report and Order in Case No. 85-049-02 establishing just and reasonable rates to be charged thereafter by U S WEST's predecessor in interest, Mountain Bell. The rates were based upon the corporate federal income tax rate of 46 percent then in effect.
- On October 22, 1986, President Ronald Reagan signed the TRA, which reduced the corporate federal income tax rate to 34 percent effective July 1, 1987.
- Following passage of the TRA, the Commission requested information from Mountain Bell regarding its impact and directed the Division to review the information and to monitor Mountain Bell's earnings. In reports dated February 20, June 5 and September 1, 1987, the Division concluded that Mountain Bell's rates did not need to be reduced. However, by the end of September 1987, Mountain Bell provided information indicating that it appeared that it would earn in excess of the rate of return on equity utilized in setting rates in over earnings. Pursuant to discussions with the Division, Mountain Bell made a voluntary rate reduction of \$9 million effective December 22, 1987.
- During the period following passage of the TRA, the Committee requested on multiple occasions that the Commission take some action to deal with the reduction in the corporate federal income tax rate.
- On June 2, 1988, the Division filed a petition seeking initiation of a Mountain Bell rate case for a further rate reduction. This petition became Docket No. 88-049-07. During the course of this rate case, Mountain Bell made two stipulated rate reductions, \$16 million effective September 22, 1988 and \$10 million effective January 1, 1989. The Commission ordered a further rate reduction in its final Report and Order on November 15, 1989 of \$22 million.
- On September 15, 1988, a Request for Agency Action was filed in Docket No. 88-049-07 by David Irvine and Georgia Peterson requesting that the Commission order a refund of all Mountain Bell over earnings during 1987 and 1988. Tel America, MCI and others joined in this request.
- The Commission determined that the request did not comply with Utah Code Ann. § 54-7-9(3)(b) (Supp. 1989) and ordered that Tel America, MCI and others would have until November 2, 1988, to file a request that complied with the statute and that the request should be filed in a new proceeding designated Docket No. 88-049-18.
- Tel America, MCI and others filed an Amended Request for Agency Action seeking an investigation of the rate of return realized by Mountain Bell in 1987 and 1988 and a refund of over earnings in those years. The Amended Request was dated October 27, 1988 and served on Mountain Bell on November 3, 1988. The Division and Mountain Bell opposed this request on the ground that it would constitute retroactive rate making.
- On March 30 1989, the Commission issued its order dismissing the Amended Request for Agency Action based upon its conclusion that it did not have authority to grant the relief sought.
- On June 15, 1989, Tel America filed its Petition for Review with the Utah Supreme Court in Case No. 890252 appealing the Commission's dismissal of the Amended Request for Agency Action. On June 16, 1989, MCI filed its Petition for Review with the Utah Supreme Court in Case No. 890251 appealing the Commission's dismissal of the Amended Request for Agency Action.
- On May 12, 1992, the Utah Supreme Court issued its opinion in Case Nos. 890251 and 890252, *MCI Telecommunications Corp. v. Public Service Commission*, 840 P.2d 765 (Utah 1992). The opinion reversed the dismissal of the Amended Request for Agency Action, and remanded the matter to the Commission for a determination of whether there were grounds for an exception to the rule against retroactive rate making. In the event an exception was found, the Court directed the Commission to order a refund of Mountain Bell's over earnings.
- On remand, the Commission directed the Division to conduct an investigation to determine whether the TRA was an unforeseen and extraordinary event and whether Mountain Bell had engaged in utility misconduct, either of which circumstances would justify an exception to the rule against retroactive rate making.
- The Division conducted an extensive investigation and filed its report on December 31, 1996. The report concluded that the TRA was not extraordinary and therefore did not qualify as an exception to the rule against retroactive rate making, but that misconduct had occurred. On August 29, 1997, the Committee filed a position statement concurring with the Division's investigation conclusions.
- On May 2, 1997, AT&T Communications of the Mountain States, inc. ("AT&T") was granted intervention by the Commission.
- On August 29, 1997, U S WEST filed a response to the Division's investigation report asserting that the evidence did not support either exception to the rule against retroactive rate making.
- On June 16, 1998, U S WEST filed pretrial motions requesting rulings that intent is required to show misconduct, that any refund should be limited to over earnings proximately caused by the conduct giving rise to an exception

to the rule against retroactive rate making and that no refund could be awarded for over earnings after the Division commenced Docket No. 88-049-07. The Commission denied the U S WEST motions on August 31, 1998.

III. SETTLEMENT

1. Litigation of this case has already consumed over 10 years and substantial resources of the parties. The parties anticipate that continued litigation of the case would consume substantial additional resources and would be highly adversarial. All of the parties and the Commission are involved in complex matters, including a number of matters related to the development of competition in the telecommunications market. The parties believe continued litigation of this matter would consume resources that would more appropriately be devoted to those matters. The parties believe it is highly likely that there would be an appeal or appeals of any Commission decision in the case and that litigation might be initiated in other forums regarding the subject matter of the dispute. Thus, the parties believe it is likely that this matter would not be resolved for a substantial period of time. In addition, the subject matter of the litigation involves actions and omissions that occurred many years ago. The parties have represented that many individuals involved have changed employment or are no longer available and that others who were involved find that their memories of the relevant events are growing dim. Accordingly, the parties believe litigation would be difficult and would become more difficult with the passage of time. All parties agree that the outcome of the litigation is uncertain.

2. Before proceeding with final preparations for hearings which were estimated to last four weeks, the parties decided to try to mediate their dispute. Mediation was held for two days in April of 1998 with retired District Court Judge Scott Daniels acting as mediator. Although the parties made some progress, this initial mediation session proved unsuccessful.

3. On August 11, 1998, U S WEST entered into a Release and Settlement Agreement with Tel America, MCI and AT&T (collectively the "Carriers"). In consideration of a payment to the Carriers of \$2,975,000, which included consideration of both their claim for refund based upon the TRA and their claim for attorney fees for bringing and preserving the claim for refund, they released U S WEST of all claims and assigned their claims to U S WEST. In addition, they filed notices of withdrawal from the case.

4. Mediation before retired Judge Daniels resumed on September 16, 1998 and continued on September 17 and 21 and on October 7, 1998. On November 13, 1998, the remaining parties signed the Agreement and filed a motion requesting that the Commission approve the Agreement.

5. The parties have concluded that it is in the public interest to resolve their differences and settle the disputes which are the subject of Commission Docket No. 88-049-18 and Supreme Court Case Nos. 890251 and 890252. In reaching this conclusion, the Division is representing the public interest and the Committee is representing the interests of a majority of residential and small commercial customers.

6. It is the position of the parties that resolution of this matter in the manner set forth in the Agreement is in the public interest and is consistent with the intent of the remand of the Supreme Court in *MCI*.

IV. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

1. The following schedule shall govern further proceedings in this matter:

Not later than

December 10, 1998

Any person that intends to formally oppose approval of the Agreement shall file a petition to intervene for that limited purpose. The petition shall include a statement of the reasons for their opposition.

December 17, 1998

Hearings will commence on approval of the Agreement as previously noticed above at 10:00 a.m. at the Commission's main hearing room, Heber M. Wells Building, Room 426, 160 East 300 South, Salt Lake City, Utah 84111, and will be continued thereafter until completed. December 18, 1998 has been reserved for continued hearings if necessary.

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At the hearing, the Commission will hear evidence from the parties in support of approval of the Agreement and will then hear from public witnesses. Public witnesses may make sworn or unsworn statements; however, if a person wishes the Commission to rely on their statement as a basis for any finding, they must testify under oath and submit to cross examination. Following public witnesses, the Commission will hear the evidence of any party formally opposing the settlement who has filed a petition for limited intervention by December 10, 1998. Following this testimony, the parties supporting approval of the Agreement shall have an opportunity to present rebuttal evidence. 2. The schedule previously set forth in the Scheduling Order dated April 1, 1998 is hereby vacated.

3. U S WEST shall publish this notice and order for two consecutive days in two newspapers of general circulation in the state as soon as is reasonably possible, but in no event later than November 24, 1998.

DATED at Salt Lake City, Utah, this 13th day of November, 1998.

/s/ Stephen F. Mecham, Chairman

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

/s/ Clark D. Jones, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary