- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of an Investigation into the Reasonableness of the Rates and Charges of the MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY))))) DOCKET NO. 88-049-18

REPORT AND ORDER APPROVING AMENDED RELEASE AND SETTLEMENT AGREEMENT

ISSUED: April 19, 1999

SYNOPSIS

By this order, the Commission approves a settlement of this long-standing dispute regarding whether U.S. WEST Communications, Inc., is required to refund earnings in excess of its authorized rate of return in 1986 through 1989 based upon exceptions to the rule against retroactive rate making. Pursuant to the settlement, U.S. WEST will refund $43,200,000 to its Utah basic exchange service customers through a single monthly bill credit and it will be released from all claims relating to its earnings during the period from 1986 through 1989. In addition, the Commission approves a settlement between U.S. WEST and certain interexchange carriers pursuant to which U.S. WEST has settled those carriers' claims for $2,975,000.

Appearances:

Thomas M. Dethlefs Gregory B. Monson David J. Jordan Stoel Rives LLP	For	U.S. WEST Communications, Inc.
Michael Ginsberg Assistant Attorney General, Laurie Noda Assistant Attorney General	"	Division of Public Utilities
Douglas C. Tingey Assistant Attorney General	"	Committee of Consumer Services
Stanley K. Stoll Jerry D. Fenn Blackburn & Stoll, LC	"	Tel America of Salt Lake City, Inc.
William J. Evans Parsons Behle & Latimer	"	MCI Telecommunications Corporation
Richard S. Wolters	"	AT&T Communications of the Mountain States, Inc.
Gregory J. Kopta Davis Wright Tremaine LLP	"	NEXTLINK UTAH, Inc.

Jerold G. Oldroyd " Electric Lightwave, Inc.
Blake D. Miller
Suitter Axland

By The Commission:

PROCEDURAL HISTORY

The procedural history of this case, which was commenced in 1988, is both lengthy and complex. We will set forth only the highlights of that history here.

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 Communications, Inc.'s ("U.S. WEST") predecessor in interest, The Mountain States Telephone and Telegraph Company ("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 Tax Reform Act of 1986, Public Law No. 95-514, 100 Stat. 2096 (1986) ("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 of Public Utilities ("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 Case No. 85-049-02 ("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 of Consumer Services ("Committee") requested on several occasions that the Commission take some action to deal with the reduction in the corporate federal income tax rate. In light of the ongoing Division investigation, the Commission did not institute further proceedings, but rather directed the Division to provide information obtained in its investigation to the Committee.

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 of Salt Lake City, Inc. ("Tel America"), MCI Telecommunications Corporation ("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)(*MCI*). 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 based on the TRA being an unforeseen and extraordinary event or utility misconduct. In the event an exception was found, the Court directed the Commission to order an appropriate 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 which included extensive discovery by all parties. U.S. WEST produced thousands of documents which were reviewed by the Division and Committee. The Division, Committee, and Commission produced their files for review by U.S. WEST. Nine potential witnesses were deposed and numerous additional persons having information regarding the matter were interviewed.

Following this extensive discovery, the Division prepared and filed its lengthy Investigation 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.

Additional discovery took place following the filing of the Division's Investigation Report. Eleven potential witnesses were deposed, including some of the same persons deposed earlier, several persons were interviewed and additional written discovery, including production of documents, took place. On May 2, 1997, AT&T Communications of the Mountain States, Inc. ("AT&T"), was granted intervention by the Commission.

On August 29, 1997, the Committee, U.S. WEST, Tel America, and MCI filed responses and position statements on the Division's Investigation Report. The Committee concurred with the Division's investigation conclusions. U.S. WEST, in an extensive response, asserted that the evidence did not support either exception to the rule against retroactive rate making. Tel America and MCI took issue with the Division's conclusion that the TRA did not constitute an exception to the rule against retroactive rate making and concurred in the Division's conclusion of utility misconduct.

On June 16, 1998, U.S. WEST filed pretrial motions requesting rulings that intent is required to show utility 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. On September 21, 1998, U.S. WEST sought rehearing and reconsideration of these orders and filed a petition for interlocutory appeal or extraordinary writ with respect to them with the Utah Supreme Court. This appeal was subsequently stayed when the parties renewed their mediation and settlement negotiations.

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.

The Division, Committee, and U.S. WEST concluded that it was in the public interest to resolve their differences and settle the disputes which are the subject of this docket. They engaged in lengthy and difficult mediation of their differences before Scott Daniels, retired District Court Judge. The negotiations were highly adversarial and arms-length with each party vigorously advocating its positions and representing its interests or the interests of those it is statutorily charged to represent. On November 13, 1998, the Division, Committee, and U.S. WEST entered into a Release and Settlement Agreement ("Agreement"). The Agreement generally provided that in consideration of a refund of $50 million to U.S. WEST's customers through monthly bill credits over a period estimated at slightly less than three years, U.S. WEST would be released of all claims.

On November 13, 1998, the Commission issued its Notice of Hearing on Release and Settlement Agreement ("Notice"),

providing a description of the case and the Agreement, scheduling and providing notice of a hearing on December 17, 1998, on approval of the Agreement and notifying persons wishing to formally oppose approval of the Agreement that they would have until December 10, 1998, to file statements setting forth the reasons they opposed approval of the Agreement. The Notice required U.S. WEST to publish the Notice in two newspapers of general circulation in the state as soon as reasonably possible, but in no event later than November 24, 1998. U.S. WEST published the notice in the Salt Lake Tribune and the Deseret News on November 20 and 21, 1998.

On December 10, 1998, a Joint Position Statement of NEXTLINK UTAH, Inc., and Electric Lightwave, Inc., in Opposition to Proposed Settlement was filed. (NEXTLINK UTAH, Inc., and Electric Lightwave, Inc., will be referred to collectively herein as the "CLECs".) The basis of the CLECs opposition was their allegation that a refund paid over approximately three years to customers of U.S. WEST, as provided in the Agreement, would have an impact on the development of competition in the local exchange market.

At the hearing on December 17, 1998, the parties to the Agreement presented testimony and argument in support of approval of the Agreement, and the CLECs presented testimony and argument in opposition to approval of the Agreement. Retired Judge Scott Daniels testified regarding the negotiations between the parties. Wesley D. Huntsman, Supervisor - Projects and Analysis Section of the Division, and Carl Inouye, Lead Director - Financial Advocacy for U.S. WEST, presented testimony in support of approval of the Agreement. Witnesses for the respective parties offered and adopted the Division's Investigation Report, U.S. WEST's response, and substantial testimony of Carl Inouye, previously filed during the remand portion of the case. The Investigation Report, U.S. WEST's response, and Mr. Inouye's testimony contain a detailed analysis of the issues in the case, including the issues raised by the Utah Supreme Court in *MCI*. In addition, the testimony of Ric Campbell, Director of the Division, Larry Fuller, Technical Consultant for the Division, Roger J. Ball, Executive Secretary of the Committee, and Ted D. Smith, Utah Vice President of U.S. WEST, was presented in support of approval of the Agreement. Rex Knowles, Director Regulatory and External Affairs for NEXTLINK UTAH, Inc., and Robert Y. McMillin, a consultant to Electric Lightwave, Inc., testified in opposition to approval of the Agreement. Following the hearing, the Commission requested that the parties to the Agreement attempt to modify the Agreement in some manner to address the concern of the CLECs.

On March 22, 1999, the parties to the Agreement entered into a Conditional Amendment to Release and Settlement Agreement ("Conditional Amendment") in which they agreed to amend the Agreement as provided in the Conditional Amendment if the CLECs agreed not to appeal a Commission order approving the Agreement as amended and the Commission entered an order approving the Agreement as amended and if they had the option to withdraw from the Conditional Amendment if an appeal of the Commission's order approving the Agreement as amended were filed. The Conditional Amendment modifies the refund in the Agreement from $50,000,000 in the form of monthly bill credits over a period estimated at slightly less than three years to a refund of $43,200,000 in the form of a single monthly bill credit.

On March 23, 1999, the parties to the Agreement submitted a Joint Motion for Approval of Amended Release and Settlement Agreement and Issuance of Notice. In this motion, the parties represented that the single bill credit provided in the Conditional Amendment was negotiated as the reasonable equivalent to the series of monthly bill credits provided in the Agreement. The Division and Committee represented that the single bill credit provided in the Conditional Amendment is preferable from a public policy standpoint to the series of monthly bill credits provided in the Agreement because of its administrative simplicity, its more significant impact on individual customers' bills, and the fact that it will not dissuade any customer of U.S. WEST from making a choice to switch to a competitive provider of local exchange service in the future.

The motion also requested that the Commission issue a notice of hearing to consider approval of the Agreement as amended by the Conditional Amendment. The Commission issued a Notice of Hearing on Amended Release and Settlement Agreement on March 23, 1999, setting a hearing on April 8, 1999. U.S. WEST published this notice in the Salt Lake Tribune and Deseret News on March 27 and 28, 1999.

At the hearing on April 8, 1999, the testimony of Messrs. Huntsman and Smith was proffered regarding the Conditional Amendment. In addition, Mr. Fuller testified regarding Appendix 2 to the Conditional Amendment. The CLECs filed a stipulation that they are not opposed to approval of the Agreement as amended by the Conditional Amendment. No

person appeared in opposition to approval.

DISCUSSION

The Commission may approve a settlement agreement of the parties resolving issues before the Commission if the settlement is in the public interest. Utah Code Ann. § 54-7-1 provides in part:

(1) Informal resolution, by agreement of the parties, of matters before the commission is encouraged.

(2) The commission may approve any agreement after considering the interests of the public and other affected persons.

(3)(a)At any time before or during a hearing or proceeding before the commission, the parties between themselves . . ., may engage in settlement conferences and negotiations.

(3)(b)The commission may adopt any settlement proposal of the parties and may enter an order based upon the proposal.

The fact that a matter is before the Commission on remand from the Utah Supreme Court does not affect this conclusion. In *Utah Dept. of Admin. Services v. Public Service Comm'n*, 658 P.2d 601 (Utah 1983), the Court considered whether the Commission could approve settlement of a matter remanded from the Court in *Committee of Consumer*

Services v. Public Service Comm'n, 595 P.2d 871 (Utah 1979). Like the remand in this case, the Court's opinion in *Committee of Consumer Services v. Public Service Comm'n* contained specific instructions to the Commission on how to resolve the issues remanded to it and directed that the Commission hold an evidentiary hearing. The parties settled their dispute in a manner that involved compromise of disputed issues without an evidentiary hearing except with regard to approval of the settlement. At the hearing before the Commission on approval of the settlement, certain consumer groups opposed approval on the ground that the settlement did not resolve the dispute precisely as directed by the Court. This claim was raised on appeal of the Commission's decision approving the settlement by various parties. In response to this argument, the Court said:

The law has no interest in compelling all disputes to be resolved by litigation. One reason public policy favors the settlement of disputes by compromise is that this avoids the delay and the public and private expense of litigation. The policy in favor of settlements applies to controversies before regulatory agencies, so long as the settlement is not contrary to law and the public interest is safeguarded by review and approval by the appropriate public authority.

The policy in favor of settlements also applies to cases remanded by appellate courts, even though settlements in this circumstance invariably involve some deviation from the course of events contemplated in the mandate. If that deviation were considered an affront to the reviewing court, the policy favoring settlements would be frustrated. In this circumstance, the important consideration is not whether the settlement deviates from the process contemplated in the mandate, but whether the terms of the settlement achieve the result sought to be achieved by the mandate. In addition, where the controversy involves public regulation, the settlement must be consistent with the public interest.

- 658 P.2d at 613-614

Based upon this guidance, we must determine whether the Agreement as amended by the Conditional Amendment achieves the results sought to be achieved by *MCI* consistent with the public interest.

At the outset we note that the testimony in this docket is undisputed, that the settlement is consistent with the results the Court sought to achieve in *MCI*, and is in the public interest. Messrs. Huntsman, Inouye, Campbell, Ball and Smith have all testified that the settlement complies with these requirements. The only objection to the settlement, that it might interfere with the development of competition in the local exchange market, has been resolved by the Conditional Amendment.

The Division is charged to act in the public interest in providing the Commission with objective and comprehensive information, evidence, and recommendations. Utah Code

Ann. § 54-4a-6. The Committee is charged with advocating positions advantageous to a majority of residential consumers as determined by the Committee and those engaged in small commercial enterprises. Utah Code Ann. § 54-10-4(3). The Division and Committee have represented to the Commission that they have acted consistent with these duties in entering into the settlement in this case. More importantly, Judge Daniels and other witnesses have testified that the settlement negotiations were arms length. Each of the parties vigorously advocated its position and the interests of its constituents. The negotiations were highly adversary. In fact, the first round of mediation was unsuccessful, and Judge Daniels thought it unlikely that the parties would be able to reach agreement. However, after U.S. WEST's settlement with the Carriers and the Commission's ruling on U.S. WEST's motions, the parties were willing to reconsider their positions, and the settlement was successfully concluded after further difficult negotiations.

In *Utah Dept. of Admin. Services*, the Court noted that the parties to the settlement in that case "vigorously pursued their positions; negotiations were extremely tough and at arms length." 658 P.2d at 606. In resolving issues directed by the Court's mandate, the Court noted that "whether the stated goal has been achieved is a question to be resolved by the Commission, which could do so either by hearing witnesses and reaching its decision in an adversary proceeding or by reviewing the outcome of highly adversary and good faith negotiations between the parties." *Id.* at 614.

We find based on the undisputed evidence that the settlement in this docket is the result of vigorous, highly adversary negotiations. The parties strenuously advocated their positions and reached settlement based upon recognition of the inherent risk in litigation of disputed claims. As in *Utah Dept. of Admin. Services*, the fact that the negotiations were highly adversary in itself provides some assurance that the settlement is reasonable and in the public interest.

In *MCI*, the Court directed us to make findings on a variety of questions. The purpose of those questions was to determine the amount of Mountain Bell's over earnings from 1986 through 1989, the impact of the TRA on Mountain Bell's expenses, other changes in Mountain Bell's earnings during the same period, whether the TRA qualifies as an unforeseeable and extraordinary event that is an exception to the rule against retroactive rate making, and whether Mountain Bell engaged in utility misconduct. 840 P.2d at 772, 774, 776. In summary, we understand that the intent of the mandate was that we determine whether an exception to the rule against retroactive rate making was applicable in this case and, if so, determine the amount of over earnings realized by Mountain Bell during the years in question that should be refunded to ratepayers. The point was that we should order a refund if ratepayers were entitled to one.

Given the fact that the case has been resolved by settlement rather than contested hearings, we are unable to make findings on each issue raised by the Court. However, in *Utah Dept. of Admin. Services*, the Court upheld the Commission's approval of a settlement in similar circumstances. The Court stated that the policy favoring settlement of disputes would be frustrated if the parties were unable to deviate from the precise terms of the mandate. 658 P.2d 614.

Based upon the Division's Investigation Report, U.S. WEST's response and the testimony of Messrs. Huntsman and Inouye, it appears that there is not serious dispute about the amount of Mountain Bell's over earnings or the impact of the TRA on Mountain Bell's earnings. The witnesses agree that Mountain Bell realized revenues in excess of those contemplated when rates were set in Case No. 85-049-02 of approximately $53 million.

The questions disputed by the parties and which made their mediation and settlement negotiations difficult were whether the TRA was the type of unforeseeable and extraordinary event that justifies an exception to the rule against retroactive rate making, whether Mountain Bell had engaged in misconduct justifying an exception to the rule against retroactive rate making, the standard for determining utility misconduct, whether, if an exception were shown, the over earnings had to be related to the conduct or event giving rise to the exception to justify a refund, whether over earnings that occurred after the commencement by the Division of the 1988 rate case would be subject to a refund absent a claim of misconduct in that case, whether interest would be due on over earnings ordered refunded, and, if so, at what rate and numerous other subsidiary issues.

Recognizing the inherent risks of litigation, plus the delay associated with continued litigation and the consumption of regulatory resources involved, Mr. Huntsman testified that it was reasonable for the Division and Committee to compromise on a refund of $43.2 million. On the other hand, Mr. Inouye testified that although U.S. WEST believed it would ultimately prevail and would not be required to make any refund, it recognized the uncertainty of litigation and the consumption of resources that would be involved in continued litigation of the matter. Therefore, U.S. WEST also

concluded that it was in its corporate interest and the public interest to settle and conclude this matter.

All parties recognized that the current body of ratepayers differed significantly from the ratepayers who paid the rates resulting in over earnings in 1986 through 1989. All agreed that it was not possible to identify and make a refund to the 1986 through 1989 ratepayers and that, even if they could be identified, the administrative cost of making refunds to them would be enormous. Accordingly, they agreed that the refund should be made as soon as possible to current customers in the form of bill credits consistent with the manner the Commission has directed that most refunds be made, including refunds in other cases involving claims of potential overpayments in periods that significantly predate the time the refund is made.

Litigation of this case has already consumed over 10 years and substantial resources of the parties and the Commission. 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. Continued litigation of this matter would consume resources that would otherwise be devoted to those matters. It is highly likely that there would be an appeal or appeals of any Commission decision in the case if resolved by litigation and that litigation might be initiated in other forums regarding the subject matter of the dispute. For example, U.S. WEST has already appealed the Commission's orders of August 31, 1998 on legal issues. Thus, 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. Many individuals involved have changed employment or are no longer available. Others who were involved find that their memories of the relevant events are growing dim. Accordingly, 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.

We find that it is in the public interest to conclude this litigation in the manner provided in the settlement for several reasons. First, ratepayers will realize a substantial refund. We find that the amount of the refund is just and reasonable based upon potential outcomes were the case to be fully litigated. Second, we believe that assuring today's ratepayers of a refund soon is far preferable to a refund that might be awarded after litigation of this matter is ultimately concluded. The longer the time that passes prior to resolution of this matter, the less likely it is that those ratepayers who paid the rates resulting in over earnings will enjoy the refund. Third, conclusion of this matter will avoid continued litigation with its attendant consumption of scarce resources.

Accordingly, we find and conclude that the Agreement, as amended by the Conditional Amendment, is a fair and reasonable settlement of this matter, that it resolves the case in a manner consistent with the intent of the Court in *MCI*, that it is in the public interest, and that it should be approved.

The Agreement contains a provision that our orders issued August 31, 1998 on U.S. WEST's motions will have no precedential effect or be cited in proceedings involving U.S. WEST. This is not the first time we have considered an issue of this nature. In Docket No. 88-049-07, the rate case initiated by the Division in June of 1988, in which the original petition in this docket was filed, the Commission entered an order regarding an interim rate reduction for Mountain Bell. As part of a settlement which led to the September 1988 stipulated reduction in that case, the Commission agreed to vacate that order. We do not believe that it is inappropriate for the parties to agree that interim orders, that would have been the subject of an appeal if the case were not settled, be deemed of no precedential value in a settlement that avoids the appeal. In entering into the Agreement, no party has waived its right to make any argument in the future if the same issues arise. The parties have only agreed that the orders issued by the Commission on August 31, 1998 will not be a basis for a Commission decision and will not be cited as precedent in a future U.S. WEST case. We find and conclude that this is reasonable in the context of settlement of this matter.

We also find and conclude that the settlement between U.S. WEST and the Carriers should be approved. That settlement was the result of arms length negotiations commenced during the first portion of the mediation before Judge Daniels. The payment to the Carriers was based both on their release of claims for a refund and their release of claims for attorneys fees to preserve the claim for the ratepayers which has led to the substantial refund in this case. Based upon the decisions of the Court in *Stewart v. Public Service Comm'n,*

885 P.2d 759 (1994), and *Barker v. Public Service Comm'n,* 970 P.2d 702 (1998), it is possible that Tel America and

MCI might have been entitled to a substantial attorney fee award which would have reduced the amount refunded to ratepayers.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Release and Settlement Agreement dated November 13, 1998, as amended by the Conditional Amendment to Release and Settlement Agreement dated March 22, 1999, between the Division, the Committee, and U.S. WEST is hereby approved.

2. Based upon and without modifying the Release and Settlement Agreement and the Conditional Amendment to Release and Settlement Agreement, U.S. WEST shall refund $43,200,000 to its Utah local exchange customers at the time and in the manner provided in the Conditional Amendment to Release and Settlement Agreement.

3. In consideration of the refund referenced in the foregoing paragraph and the other terms and conditions of the Release and Settlement Agreement as amended by the Conditional Amendment to Release and Settlement Agreement, U.S. WEST, its officers, directors, agents, authorized representatives, parent and affiliate corporations and entities and their respective officers, directors, agents, and authorized representatives, and attorneys are hereby released and discharged from any and all claims, actions, causes of action, liabilities, obligations, suits, losses, expenses, and costs, of whatever kind or nature, which now exist or which may hereafter accrue, whether known or unknown, because of, for, arising out of, or in any way connected with, Docket No. 88-049-18 before the Commission and Case Nos. 890251 and 890252 before the Utah Supreme Court or the subject matter of any of them, including, without limitation, all claims arising out of or related to any alleged over earnings on the part of Mountain Bell for the period January 1, 1986, through November 15, 1989, including any over earnings resulting from the TRA or alleged misconduct on the part of Mountain Bell, including any penalties, interest, late charges, or attorney fees or costs with respect thereto.

4. The Order on U.S. WEST Communications Inc.'s Motion in Limine on Proof Required for Utility Misconduct, the Order on U.S. WEST Communications Inc.'s Motion in Limine on Proximate Cause, and the Order on Motion of U.S. WEST Communications, Inc., for Partial Summary Judgment on Period of any Refund issued by the Commission on

August 31, 1998, in this Docket shall have no precedential value and may not be cited in any other Commission proceeding involving U.S. WEST.

5. The Release and Settlement Agreement between Tel America of Salt Lake City, Inc., MCI Telecommunications Corporation, AT&T Communications of the Mountain States, Inc., and U.S. WEST dated August 11, 1998, is hereby approved.

DATED at Salt Lake City, Utah, this 19th day of April, 1999.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Clark D. Jones, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary