

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Filing by US)
 WEST COMMUNICATIONS, INC.)
 of a Revised Tariff to Discontinue)
 Offering Centrex Plus Service to New)
 Customers.)

DOCKET NOS. 96-049-T05
& 98-049-T19

REPORT AND ORDER

ISSUED: November 26, 1999

By the Commission:

PROCEDURAL HISTORY

On February 5, 1996, US WEST filed Advice Letter 96-05 submitting revised pages of its Exchange and Network Services Tariff. The changes essentially would have grandfathered Centrex Plus on terms specified. The advice letter was assigned Docket No. 96-049-T05. AT&T Communications of the Mountain States, Inc. ("AT&T") and MCI Telecommunications Corporation ("MCI") sought and were granted intervention in Docket No. 96-049-T05. They opposed US WEST's filing on the ground that Centrex Plus should be available for resale. On September 25, 1996, following hearings and the filing of post-hearing briefs, the Commission issued its Report and Order in Docket No. 96-049-T05. The Commission required US WEST to continue to offer Centrex Plus for resale.

On October 15, 1996, US WEST and the Division petitioned for rehearing or clarification of the Commission's Report and Order. On November 4, 1996, the Commission issued its Order Granting Petitions and Notice of Hearing granting rehearing with respect to certain issues. On December 3, 1996, McLeod Telemanagement, Inc. ("McLeod") sought intervention in the proceeding. McLeod was granted limited intervention. Following further hearings, the Commission issued its Second Report and Order in Docket No. 96-049-T05 on April 29, 1997. In the Second Report and Order, the Commission still required US WEST to continue to offer Centrex Plus for resale, but ordered that no telecommunications corporation could resell Centrex Plus to an aggregation of unrelated business or residence customers.

On January 5, 1998, McLeodUSA Telecommunications Services, Inc. ("McLeodUSA") filed a Petition To Modify Prior Order and Rescind Temporary Centrex Plus Resale Restrictions in Docket No. 96-049-T05. On March 12, 1998, US WEST filed Advice Letter 98-11, proposing changes to its Exchange and Network Services Tariff to indicate that Centrex Prime, a replacement product for Centrex Plus, was available. This advice letter was assigned Docket No. 98-049-T11. On April 10, 1998, US WEST filed Advice Letter 98-19, proposing changes to its Exchange and Network Services Tariff to indicate that Centrex Plus was being grandfathered in light of the availability of Centrex Prime. This advice letter was assigned Docket No. 98-049-T19. On April 14, 1998, the Commission issued its Report and Order and Notice of Hearing in Docket No. 98-049-T11 temporarily suspending the offering of Centrex Prime and stating that the issue of the offering of Centrex Prime would be considered in Docket No. 96-049-T05. On April 20, 1998, US WEST sought reconsideration of the Commission's April 14, 1998 order in Docket No. 98-049-T11. On May 8, 1998, the Commission issued its Order of Tariff Suspension suspending Advice Letter 98-19 and consolidating the matter for hearing with McLeodUSA's petition in Docket No. 96-049-T05. On June 11, 1998, following hearing, the Commission issued its Order on Reconsideration Lifting Suspension and Conditionally Approving Advice Letter 98-11 in Docket No. 98-049-T11. By this order, the Commission lifted the temporary suspension of Centrex Prime.

On June 15, 1998, McLeodUSA filed a request that the procedural schedule in Docket Nos. 96-049-T05 and 98-049-T19 be suspended pending a decision by the Federal Communications Commission in CC Docket No. 98-84, *In the Matter of Petition for Preemption of Nebraska Public Service Commission Decision Permitting Withdrawal of Centrex Plus Service by USWest Communications, Inc.* No party opposed this request, which was granted by the Commission.

On July 6, 1999, McLeodUSA filed a Petition for Order Establishing Procedural Schedule requesting the Commission to establish a procedural schedule since the FCC had not issued a decision in the Centrex matter before it. In response to this petition, the Commission set a new procedural schedule in Docket Nos. 96-049-T05 and 98-049-T19. On September 13, 1999, the Division filed its testimony supporting US WEST's petition to grandfather Centrex Plus in light of the availability of Centrex Prime. Among other things, the Division noted that throughout the history of Centrex and Centron product offerings, US WEST had periodically offered a new product and grandfathered existing products. The Division further stated that Centrex Prime appeared to be an adequate replacement for Centrex Plus and that the terms of grandfathering provided adequate protections to existing customers of Centrex Plus.

On October 7, 1999, McLeodUSA filed its Motion To Withdraw Petition To Modify Prior Order and Rescind Temporary Centrex Plus Resale Restrictions in Docket No. 96-049-T05. By this pleading, McLeodUSA withdrew its January 5, 1998 petition and the testimony filed by its witnesses. On November 29, 1999, US WEST and the Division filed their Stipulation Regarding Grandfathering of Centrex Plus ("Stipulation").

STIPULATION

In the Stipulation, US WEST and the Division stipulated that the Commission should enter an order lifting the Commission's suspension of US WEST's Advice Letter 98-19. The effect of this Stipulation is that changes to US WEST's Exchange and Network Services Tariff indicating that Centrex Plus, which is principally a price listed service, be grandfathered would be allowed. The terms for grandfathering Centrex Plus set forth in the Stipulation are as follows:

1. Current customers of Centrex Plus may continue to use the service for a period of three years or until their current contracts expire, whichever is longer ("Grandfather Period").
2. Customers wishing to terminate Centrex Plus service obligations during the Grandfather Period may do so and early termination charges will be waived.
3. Centrex Plus will be available for resale to US WEST's customers receiving Centrex Plus during the Grandfather Period.

US WEST and the Division also stipulated that the principal customers using Centrex Plus in the state of Utah are large government and eleemosynary institutions that have long planning and budgeting cycles, that the terms of grandfathering are reasonable to allow these customers sufficient time to switch to other services in lieu of Centrex Plus, that the waiver of early termination charges also serves to facilitate the change of services by Centrex Plus customers whenever they are ready to do so and that Centrex Prime is an adequate replacement service for Centrex Plus for customers such as these that choose to have a central office-based service. Based upon the foregoing, US WEST and the Division stipulated that it is in the public interest and consistent with past Commission practices for the Commission to allow U S WEST to grandfather Centrex Plus.

DISCUSSION

Centrex Plus is a central office-based switching service offered by US WEST to businesses as an alternative to private branch exchange ("PBX"), multi-line key systems and basic business service ("1FB") with custom calling features. Centrex Plus is part of the Centrex Centron family of services which US WEST has offered for many years. In a Report and Order issued January 25, 1988 in Docket No. 86-049-17, the Commission exempted Centrex services from tariff requirements because they were subject to effective competition, principally from providers of terminal equipment that was readily available to both large and small businesses and provided equivalent capabilities to customers. A service purchased in conjunction with Centrex service, the Network Access Register ("NAR"), remained tariffed. In addition, pursuant to the 1988 Report and Order and at the request of the Division, US WEST included a description of Centrex services in the Exchange and Network Services Tariff for the purpose of making customers aware of the existence of these non-tariffed services. By Order issued March 10, 1992 in Docket No. 91-049-T29, the Commission approved tariff revisions grandfathering most of the Centrex services then offered.

The law favoring settling disputes over litigating them is as applicable to regulatory proceedings as it is to civil litigation. *Utah Dept. of Admin. Services v. Public Service Comm'n*, 658 P.2d 601, 613 (Utah 1983). Statutorily, "[i]nformal resolution, by agreement of the parties, of matters before the [C]ommission is encouraged. The Commission may approve any agreement after considering the interests of the public and other affected persons." U.C.A. § 54-7-1.

The Stipulation in this docket is this type of agreement. The grandfathering of Centrex Plus is consistent with prior practice with the Centrex and Centron family of products. Given that Centrex Prime is available and is apparently an adequate replacement for Centrex Plus, it is reasonable to allow grandfathering of Centrex Plus. The terms of grandfathering provide reasonable protections to US WEST's current Centrex Plus customers. They are given a reasonable period of time to replace their Centrex Plus service with other service provided by US WEST or another telecommunications corporation and may change to alternate services or alternate providers without termination penalties. In addition, any other telecommunications corporation may resell Centrex Plus to these customers during the period they continue to purchase the service from US WEST. Our concerns regarding the availability of Centrex Plus for resale as a means of market entry are reduced by McLeodUSA's withdrawal of its petition and testimony in this case. Based upon McLeodUSA's withdrawal and the Division's testimony, there is no opposition to U S WEST's Advice Letter 98-19 grandfathering Centrex Plus.

Based upon the foregoing, we find and conclude that grandfathering of Centrex Plus on the terms set forth in the Stipulation is in the public interest.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Commission's Order of Tariff Suspension issued May 8, 1998 in Docket No. 98-049-T19 is hereby vacated.
2. US WEST is authorized to grandfather Centrex Plus on the following terms and conditions:
 - a. Current customers of Centrex Plus may continue to use the service for a period of three years or until their current contracts expire, whichever is longer ("Grandfather Period").
 - b. Customers wishing to terminate Centrex Plus service obligations during the Grandfather Period may do so and early termination charges will be waived.
 - c. Centrex Plus will be available for resale to US WEST's customers receiving Centrex Plus during the Grandfather Period.
3. Any party aggrieved by this Order may file a petition for rehearing or reconsideration with the Commission within 20 days following the date the Order is issued. If the petition is denied or deemed denied by failure of the Commission to act on it within 20 days of the date of filing, the party may file a petition for review with the Utah Supreme Court within 30 days.

DATED at Salt Lake City, Utah, this 26th day of November, 1999.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Clark D. Jones, Commissioner

Attest:

/s/Julie Orchard, Commission Secretary