

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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In the Matter of the Petition of U.S. WEST )	<u>DOCKET NOS. 99-049-13 &amp; 99-049-17</u>
COMMUNICATIONS, INC., for Pricing )	
Flexibility )	<u>CLOSING DOCKET, GRANTING</u>
)	<u>INTERVENTION AND SETTING</u>
)	<u>DEADLINE FOR INTERVENTION,</u>
)	<u>PROVIDING NOTICE TO</u>
)	<u>CERTIFICATED PROVIDERS TO FILE</u>
)	<u>CURRENT PRICE LISTS AND MAPS OR</u>
)	<u>VERIFICATION, ALLOWING</u>
)	<u>DISCOVERY, AND REQUIRING</u>
)	<u>U.S. WEST TO MAKE SUPPLEMENTAL</u>
)	<u>FILING</u>

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ISSUED: June 29, 1999

By The Commission:

On April 30, 1999, U.S. WEST Communications, Inc. ("U.S. WEST"), filed a Petition for Pricing Flexibility ("Petition") in which it sought an order of the Commission granting it pricing flexibility for its services which were the same as, or substitutable for, services provided by competitors in its service area. The Petition also requested that pricing flexibility for services or geographic areas be expanded automatically in the future when a competitive provider offers additional services or expands its geographic service area. On the same day, U.S. WEST filed a motion for protective order. These pleadings were assigned Docket No. 99-049-17. On

May 10, 1999, we issued the requested Protective Order.

Prior to filing the Petition, U.S. WEST had filed notices of intervention in two dockets in which competitors were seeking certificates of convenience and necessity authorizing them to provide telecommunications services in the state of Utah as follows: Docket

No. 98-2263-01, Advanced Telecommunications, Inc.; Docket No. 98-2267-01, CCCUT, Inc. dba CONNECT!. In these dockets, U.S. WEST petitioned the Commission to grant it pricing flexibility with regard to its services that are the same as, or substitutable for, the services the competitors were authorized to provide in the same defined geographic area in which the competitors were authorized to provide them. U.S. WEST took no position on the issue of whether the Commission should grant certificates to the competitors. In each of these dockets, we issued a Notice of Severing & Scheduling Conference in which we severed U.S. WEST's petition for pricing flexibility from the certification docket and placed the petition for pricing flexibility in a new docket, Docket No. 99-049-13, for treatment. Notice of Severing & Scheduling Conference, Docket Nos. 98-2263-01 & 99-049-13, (April 6, 1999); Notice of Severing & Scheduling Conference, Docket Nos. 98-2267-01 & 99-049-13 (April 15, 1999). Prior to the scheduled hearing in Docket No. 99-049-13, U.S. WEST notified US that it intended to file the Petition. Accordingly, the hearing in Docket No. 99-049-13 was held in abeyance pending the filing of and an initial hearing on the Petition.

Since the filing of its Petition, U.S. WEST has filed notices of intervention and petitions for pricing flexibility in additional dockets in which competitors were seeking certificates to provide public telecommunications services in its service area, including Docket No. 99-2252-01, Intellicall Operator Services, Inc. dba ILD; Docket No. 99-2270-01, All West / Utah, Inc.; Docket No. 99-2272-01, Emery Telecommunications & Video, Inc. dba Emery Telecommunications; and Docket No. 99-2275-01, DSLnet Communications, LLC. As in the prior dockets, U.S. WEST took no position on the issue of whether the Commission should grant certificates to the competitors. We have not yet issued orders in those

dockets severing

U.S. WEST's petitions for pricing flexibility from the certification issues, pending issuance of this order.

On April 13, 1999, AT&T Communications of the Mountain States, Inc. ("AT&T"), filed a petition to intervene in Docket No. 99-049-13. On April 19, 1999, NEXTLINK UTAH, Inc. ("NEXTLINK"), filed a petition to intervene in the same docket. On April 26, 1999, we issued our Order Granting Intervention to AT&T and NEXTLINK. On April 27, 1999, Electric Lightwave, Inc. ("ELI"), filed its petition to intervene in Docket No. 99-049-13. We will grant intervention to ELI in this Order.

On May 10, 1999, following consultation with the Commission regarding scheduling, U.S. WEST gave notice to the Division of Public Utilities ("Division"), the Committee of Consumer Services ("Committee"), AT&T, NEXTLINK, and ELI of the

May 21, 1999 scheduling conference in Docket No. 99-049-17. A scheduling conference was convened on May 21, 1999, at which all of the foregoing parties except AT&T appeared either in person or by telephone.

During the conference, questions were raised regarding compliance by U.S. WEST with the requirements of Utah Admin. Code R746-351-4. This rule requires an incumbent local exchange carrier ("ILEC") such as U.S. WEST to identify the competitive local exchange carrier ("CLEC"), the defined geographic area, the public telecommunications services being provided by the CLEC in the defined geographic area, and the specific services of the ILEC to be priced flexibly in the defined geographic area in its petition. It also requires the ILEC to provide notice of the petition to all parties in the CLEC's certification proceeding and to all certificated providers of the public telecommunications services in the defined geographic area. Questions were also raised regarding whether all CLECs providing services in the state have filed price lists with respect to the public telecommunications services they have been authorized to offer or maps showing the areas in which any such services are available. The Division noted that only a few CLECs had filed price lists or maps and that some of those had only recently been filed.

U.S. WEST stated that it could not be certain that it could fully comply with Rule R746-351-4 with respect to all services and areas for which it should be entitled to pricing flexibility in the absence of such filings by the CLECs.

Based upon the foregoing, it was suggested without objection that it would be appropriate for the Commission to issue an order notifying CLECs that they must file current price lists identifying the public telecommunications services they are offering and maps showing the defined geographic areas in which the services are being offered. If a CLEC is not offering telecommunications services, it was suggested without objection that the CLEC should file a verification so stating. It was further suggested without objection that the Order would also provide notice to all CLECs of U.S. WEST's Petition and establish a deadline for intervention in Docket No. 99-049-17.

After the CLECs' filings are received, it was suggested without objection that

U.S. WEST should have a period of time to identify the specific services and defined geographic areas for which it believed pricing flexibility was applicable. It was further suggested without objection that U.S. WEST should be permitted to conduct discovery of the CLECs during this period. When U.S. WEST has sufficient information to identify the specified services and geographic areas, it was suggested without objection that it should file a supplement to its petition. It was suggested without objection that the Commission would thereafter convene a further scheduling conference of the parties to identify issues and establish a procedure to resolve them. It was suggested without objection that the parties consider whether a meeting of the parties might facilitate agreement on specific services and defined geographic areas in which pricing flexibility might become effective.

It was further suggested without objection that proceedings to date in Docket

No. 99-049-13 should be consolidated with Docket No. 99-049-17 and be regarded as proceedings in this docket and that Docket No. 99-049-13 should be closed. It was further suggested without objection that pending and future petitions of U.S. WEST for pricing flexibility in certificate application dockets of CLECs would be severed from those dockets and treated in Docket No. 99-049-17. It was further suggested without objection that at a later stage of Docket No. 99-

049-17, the Commission consider other procedures for dealing with extensions of pricing flexibility for additional services or defined geographic areas when a CLEC offers additional services or offers services in a new geographic area.

The Commission finds and concludes that an order and notice based upon the foregoing is in the public interest.

By separate orders, the Commission will sever U.S. WEST's petitions for pricing flexibility in Docket Nos. 99-2252-01, 99-2270-01, 99-2272-01 and 99-2275-01 from those dockets and transfer the petitions to Docket No. 99-049-17 for treatment. The Commission's current intention is to follow this same procedure in future dockets in which U.S. WEST files a petition for pricing flexibility and to establish procedures at a later stage in Docket No. 99-049-17 by which pricing flexibility for additional services or in additional geographic areas may be considered.

### ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

1. All proceedings and orders in Docket No. 99-049-13 shall be transferred into and deemed to have occurred in Docket No. 99-049-17. Petitions to intervene in Docket No. 99-049-13 will be deemed petitions to intervene in Docket No. 99-049-17 and orders granting those petitions in Docket No. 99-049-13 will be deemed to grant intervention in Docket No. 99-049-17. Our orders severing U.S. WEST's petitions for pricing flexibility in Docket Nos. 98-2263-01 and 98-2267-01 and placing those petitions in Docket No. 99-049-13 for treatment shall be deemed to place those petitions in Docket No. 99-049-17 for treatment. All matters in Docket No. 99-049-13 having been transferred to Docket No. 99-049-17, Docket No. 99-049-13 is hereby closed.
2. ELI's petition for intervention filed in Docket No. 99-049-13 and now deemed filed in Docket No. 99-049-17 pursuant to the foregoing paragraph is hereby granted.
3. The deadline for filing petitions to intervene in Docket No. 99-049-17 is 30 days from the date of this Order.
4. Within 30 days from the date of this Order, each CLEC certificated to provide public telecommunications service in the state of Utah shall file current price lists or prices, terms and conditions of competitive contracts describing the public telecommunications services it is offering, and maps showing the areas in which the services are being offered by the CLEC in the state of Utah. These filings shall comply with Rule R746-349-4. If a CLEC has already filed current price lists or prices, terms and conditions of competitive contracts, and maps, it shall file a verification that the price lists, prices, terms and conditions of competitive contracts, and maps on file, are current. If a CLEC is not offering public telecommunications services in the state of Utah, it shall file a verification that it is not currently offering public telecommunications services in the state of Utah.
5. Within 75 days following the filing by CLECs of current price lists and maps or verifications as provided in the foregoing paragraph, U.S. WEST may conduct discovery of CLECs if necessary to determine the services offered by CLECs, the defined geographic areas in which the services are offered, whether the services are the same as, or substitutable for, services of U.S. WEST, and whether the CLEC is "providing" the services. If a CLEC has not intervened in this docket, it shall nonetheless be subject to discovery through subpoena. If it is necessary for U.S. WEST to file a motion to compel with regard to discovery, it may seek to extend the discovery period with respect to the CLEC against whom the motion to compel is directed.
6. Following conclusion of the discovery period, the parties shall consider whether a meeting of the parties would facilitate agreement on specific services and defined geographic areas to which pricing flexibility might be effective. If the parties agree that a meeting would facilitate agreement, the Division shall coordinate the scheduling of a meeting within 20 days following conclusion of the discovery period.
7. Within 40 days following the conclusion of the discovery period, U.S. WEST shall make a supplemental filing to its Petition identifying the specific services and the defined geographic areas for which it believes pricing flexibility should become effective. The supplemental filing shall comply with Rule R746-351-4, and notice of the filing shall be provided

as required by that rule.

8. Following the supplemental filing by U.S. WEST, contemplated in the foregoing paragraph, the Commission shall schedule a further conference to identify contested issues, if any, and to determine a procedure to resolve contested issues.

DATED at Salt Lake City, Utah, this 1st day of July, 1999.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Clark D. Jones, Commissioner

Attest:

/s/ Julie Orchard

Commission Secretary