

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF U S WEST COMMUNICATIONS, INC. AND ITS ABILITY TO SERVE SOUTH DAKOTA CUSTOMERS)	ORDER TO SHOW CAUSE
)	
)	TC97-192
)	

On December 12, 1997, the Public Utilities Commission (Commission) received a Petition for Order to Show Cause from Commission Staff. The Petition requested that the Commission issue an Order to Show Cause ordering U S WEST Communications, Inc. (U S WEST) to appear before the Commission and demonstrate its financial, managerial and technical ability, produce corporate and personal records, and show cause why one or more remedies, listed in the Petition, should not be imposed on U S WEST.

On January 8, 1998, the Commission received a response from U S WEST to the Petition. At its January 8, 1998, meeting, the Commission listened to arguments concerning the Petition from Staff Attorney, Camron Hoseck, and U S WEST Attorney, William Hasten. The Commission deferred action at that meeting.

At its January 20, 1998, meeting, the Commission again considered the Petition. The Commission has jurisdiction over this matter pursuant to SDCL 49-2-1, 49-2-2, 49-2-4, 49-13-4, 49-13-5, 49-13-13, 49-13-17, 49-31-3, 49-31-7, 49-31,7.1, 49-31-10, 49-31-11, 49-31-38, 49-31-38.1, and 49-31-38.2 and ARSD 20:10:01:45. The Commission voted unanimously to accept Staff's Petition and issue an Order to Show Cause with the following possible additional remedies: that U S WEST be ordered to improve its planning and provisioning in growth areas; that U S WEST be ordered to provision, in a timely manner, adequate and reliable service; and that U S WEST be ordered to upgrade obsolete and non-functioning infrastructure.

Therefore, the Commission recites the following in support of its Order to Show Cause:

I

U S WEST is a Colorado corporation which has, as among its corporate objects and purposes, the carrying on of a general telephone business or any business involving the transmission of intelligence by electricity.

II

U S WEST operates as a telecommunications company by reason of a certificate of authority issued by the Commission or as permitted by the Commission as a matter of law pursuant to SDCL 49-31-3 and as such U S WEST is required to possess sufficient technical, financial, and managerial capabilities to offer telecommunications services within the state of South Dakota.

III

U S WEST is a common carrier of messages and has a duty, if able, to accept and carry whatever is offered, at a reasonable time and place, of a kind it undertakes or is accustomed to carry pursuant to SDCL 49-2-1 et seq.

IV

Pursuant to its Exchange and Network Services Tariff, Section 2, Page 23, Release 1, effective December 5, 1993, U S WEST has an obligation to make all reasonable efforts to prevent out-of-service conditions. "Out-of-service" is defined as the customer has lost the ability to either originate or receive calls from a premises or location such as a residence, place of business or office locations, or a central office line or a PBX trunk cannot be used to originate or receive calls.

V

U S WEST Communications Group, a parent or similar affiliate of U S WEST, continues to generate increases in earnings, including those generated by local service which grew at a rate of 8.8% for third quarter 1997 (see attached Exhibit A). U S WEST has in the past been able to retain gains it made on the sale of its South Dakota exchanges (Commission docket TC94-122) in the amount of approximately \$43,000,000.00, subject to adjustment for the sales of three exchanges which have not been approved by the Commission and taxation, and has received two rate increases, one in 1995 and another in 1997. U S WEST has apparent access to sufficient capital and should have the financial wherewithal to maintain and operate a functional telecommunications system in South Dakota.

VI

U S WEST has in the recent past had several dockets before the Commission, the details of which are recited herein to provide a historical perspective. U S WEST appears to present a history of laxity in providing service to its South Dakota customers and those seeking to become its South Dakota customers, as demonstrated to-wit:

1. the "land development cases," both those filed as complaints or resolved after a Commission decision, in which U S WEST improperly charged customers for the extension of service to their properties and was not able to accurately advise customers in advance of what the proper charges should be, a list of those cases is attached and incorporated into this Order by reference as Exhibit B;
2. the complaint of Cathy Feickert, docket TC96-174, in which it was found by the Commission that U S WEST failed to timely deliver service and accurately advise the customer of the circumstances of her service request;
3. the quality of service docket, TC97-016, in which the record indicates the following problems with service from U S WEST:
 - a. U S WEST had more outages and more lines affected by those outages in 1996, than in 1995;
 - b. consumer contacts received by the Commission regarding U S WEST went up substantially for 1996, when compared to 1995, if the contacts regarding the issue of Black Hills extended area service were removed from the 1995 numbers;
 - c. sixty-seven (67) complaints were received by the Commission for missed commitments by U S WEST to residential customers in 1996, as compared to 79 in 1995; 30 complaints were received by the Commission for missed commitments by U S WEST to business customers in 1996, as compared to 21 in 1995;
 - d. the Commission received 62 complaints in 1996, regarding service repair reports for residential customers as compared to 26 complaints in 1995; the Commission received 12 complaints for service

repair reports for business customers in 1996, as compared to 5 complaints in 1995;

e. the Commission's Director of Consumer Affairs, LaNiece Healy testified that response times, turnaround times, and results that she observed in her dealings with U S WEST as Director of Consumer Affairs for the Public Utilities Commission, have not improved over the last couple of years;

f. U S WEST failed to adequately maintain its SLC-96 system serving the Junius exchange causing customers to be without telecommunications services on at least 3 occasions; and

g. U S WEST did not have sufficient trunking capacity in the Sioux Falls exchanges in the summer and fall of 1996, causing slow dial tone and blocked calls for customers in those exchanges.

VII

In a time span between June 1, 1997, and through November 30, 1997, complaints regarding U S WEST's ability to provide service to South Dakota customers and those wishing to become its South Dakota customers have been made to the Commission and its staff; a synopsis of those complaints received by the Commission and its staff are attached as Exhibit C and incorporated into this Order by reference.

VIII

The complaints referenced in paragraph VII, above, can be categorized as follows: trouble, repeat trouble, want service, and billing issues.

IX

The historical information recited in paragraph VI, above, in addition to the complaints referenced in paragraph VII, above, appear to demonstrate a corporate indifference on the part of U S WEST toward its obligation to serve its South Dakota customers and citizens seeking to become customers of U S WEST. This may indicate a continuing trend on the part of U S WEST in which it fails to serve the citizens of South Dakota in a manner consistent with its corporate purpose, its authority to operate as a telecommunications company in South Dakota, its duty as a common carrier or even its tariffs which it has filed with the Commission.

X

By failing to provide adequate service, U S WEST could endanger the health, safety, and welfare of South Dakota citizens if those citizens cannot reach, for example, emergency numbers, doctors, hospitals, police, and fire protection. Further, the inability of citizens and businesses to have telecommunications services timely installed and be otherwise reliable may affect economic development and commerce and the welfare of the entire state of South Dakota. The convenience of the public can be and is negatively affected.

XI

The foregoing factors raise questions as to the competency, sufficiency and quality of management of U S WEST. The management personnel within U S WEST have an obligation to the customers of U S WEST in South Dakota and the taxpayers in South Dakota to prevent out-of-service conditions and to otherwise manage U S WEST in a manner which delivers reliable service in a timely manner to its

customers and those wanting to become its customers. U S WEST's management is further obligated to operate U S WEST as a common carrier consistent with its corporate purposes and its authority to act as a telecommunications company in South Dakota.

XII

The Commission, pursuant to SDCL 49-31-7.1(2), may require U S WEST to install facilities necessary for the safety, convenience, and accommodation of the public.

XIII

The Commission, pursuant to SDCL 49-31-7.1(3), is empowered to inquire into the management of the business of all telecommunications companies who are subject to the provisions of SDCL Chapter 49-31. U S WEST is subject to this chapter.

XIV

The Commission, pursuant to SDCL 49-31-7, is empowered to order changes or improvements in telecommunications facilities, exchanges or networks, changes in modes of operating telecommunications facilities, and in conducting a telecommunications company's business.

XV

The Commission is authorized and empowered to suspend or revoke a telecommunications company's authority to operate as a telecommunications company in this state pursuant to SDCL 49-31-3.

NOW THEREFORE, the Commission orders U S WEST and its appropriate corporate officers to appear before it on April 1-3, 1998, beginning at 9:00 a.m., in Room 412, of the State Capitol, 500 East Capitol, Pierre, South Dakota, and demonstrate its financial, managerial, and technical ability, produce corporate and personal records, and show cause why one or more of the following remedies should not be imposed upon U S WEST:

1. revocation of U S WEST's authority to act as a telecommunications company in South Dakota;
2. attach conditions to U S WEST's authority to act as a telecommunications company in South Dakota;
3. that U S WEST be immediately ordered to perform the following tasks or install equipment necessary to accomplish these objectives in its providing service in South Dakota:

a. that U S WEST install a system to provide accurate and adequate service ordering, provisioning, and maintenance. The present "system" does not appear to be providing the ability for each of the above units to interface with the other with no loss of data;

b. service ordering should be able to (1) set the installation date and time, within a four hour window, (2) determine if the facility which is necessary is available for service, (3) determine if excess construction charges will apply, (4) determine the correct billing and advise the prospective customer of same, (5) transmit name and address to directory assistance (if not non-list or non-publish), and (6) do this for a U S WEST customer or a competitive local exchange carrier customer;

c. when a site visit is necessary, the technician should call if the time cannot be made and, if the work is done as promised, the technician should inform the customer when the installation is complete;

- d. trouble reports should be completed within 24 hours of the problem being resolved. The customer should be informed of what caused the trouble and if the trouble cannot be found, the customer should also be informed of that fact;
- e. the definition of repeat trouble should not be limited to trouble reported within a 30 day period. U S WEST should be able to determine by customer call-in if trouble is recurring. This should also be available by address and by central office;
- f. that U S WEST respond to Commission staff in a timely manner indicating that a complaint has been addressed and its resolution when the Commission staff relays complaints to U S WEST;
- g. that U S WEST improve its planning and provisioning in growth areas;
- h. that U S WEST provision, in a timely manner, adequate and reliable service; and
- i. that U S WEST upgrade obsolete and non-functioning infrastructure.

4. If the Commission issues any order consistent with paragraph 2, above, failure to fulfill that order may result in the Commission recommending to the Attorney General, pursuant to SDCL 49-31- 38.2, that U S WEST's authority to operate as a corporation be revoked in South Dakota or that U S WEST or any or all corporate officers or employees violating such order may be fined individually pursuant to SDCL 49-31-38 for each incidence of violation of a Commission order.

The issues at the hearing are whether U S WEST is failing to provide reliable, timely, and adequate service to its customers and, if so, whether one or more of the remedies listed above should be imposed on U S WEST. U S WEST shall file prefiled testimony on or before March 4, 1998. Commission Staff shall file prefiled testimony on or before March 18, 1998. The hearing is an adversary proceeding conducted pursuant to SDCL Chapter 1-26. All parties have the right to attend and represent themselves or be represented by an attorney. However, such rights and other due process rights shall be forfeited if not exercised at the hearing. If you or your representative fail to appear at the time and place set for the hearing, the Final Decision will be based solely on testimony and evidence provided, if any, during the hearing or a Final Decision may be issued by default pursuant to SDCL 1-26-20.

The Commission, after examining the evidence and hearing testimony presented by the parties, shall make Findings of Fact, Conclusions of Law, and a Final Decision. As a result of the hearing the Commission may order one or more of the remedies as listed above. The Final Decision made by the Commission may be appealed by the parties to the Circuit Court and the South Dakota Supreme Court as provided by law.

It is therefore

ORDERED, that U S WEST and its appropriate corporate officers shall appear before the Commission on April 1-3, 1998, beginning at 9:00 a.m., in Room 412, at the State Capitol, 500 East Capitol, Pierre, South Dakota and demonstrate its financial, managerial and technical ability, produce corporate and personal records, and show cause why one or more of the remedies listed above should not be imposed upon it. US WEST shall file prefiled testimony on or before March 4, 1998, and Commission Staff shall file prefiled testimony on or before March 18, 1998.

Pursuant to the Americans with Disabilities Act, this hearing is being held in a physically accessible location. Please contact the Public Utilities Commission at 1-800- 332-1782 at least 48 hours prior to the

hearing if you have special needs so arrangements can be made to accommodate you.

Dated at Pierre, South Dakota, this 28th day of January, 1998.

CERTIFICATE OF SERVICE

BY ORDER OF THE COMMISSION:

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

JAMES A. BURG, Chairman

By:_____

PAM NELSON, Commissioner

Date:_____

(OFFICIAL SEAL)

LASKA SCHOENFELDER,
Commissioner