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**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UT 125/UT 80

In the Matter of the Application of )  
U S WEST Communications, Inc., for ) ORDER  
an Increase in Revenues. )

DISPOSITION: STIPULATION ADOPTED; ORDER NO. 96-107  
MODIFIED; ORDER NOS. 96-183, 96-286, AND  
97-171 RESCINDED

**Background.** This docket began in December 1995, when U S WEST Communications, Inc., (USWC) submitted its general rate filing with the Commission pursuant to the terms of the Alternative Form of Regulation (AFOR) adopted by the Commission in 1991.<sup>1</sup> In its filing, USWC requested a revenue increase of \$28 million. The case was bifurcated into a revenue requirement phase (Phase 1) and a rate design phase (Phase 2). By Order No. 97-171, the Commission completed the revenue requirement phase. In that order, we rejected USWC’s requested increase and instead ordered a revenue reduction of \$97.4 million and a refund of \$102 million, retroactive to May 1, 1996. We adopted an authorized rate of return of 8.77 percent for USWC.

USWC appealed the Commission’s order to Marion County Circuit Court and moved for a stay. On July 16, 1997, the Circuit Court stayed the order, including USWC’s obligation to issue any refund to its customers. The Circuit Court, in a judgment entered February 19, 1998, reversed and modified Order No. 97-171. The Commission appealed the judgment to the Court of Appeals, and USWC cross-appealed. The appeals involving Order No. 97-171 are called below the Rate Case Appeals.

In addition to the UT 125 issues on appeal, USWC has filed an appeal with respect to refund methodology. Order No. 91-1598 (Docket UT 80) stated that any refund would be calculated using USWC’s actual earnings during the interim rate period. In Order No. 96-183, at 4, the Commission stated that any refund would be based on “the difference between the permanent rate level established in pending docket UT 125 and

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<sup>1</sup> The AFOR was adopted in Order No. 91-1598 and was due to expire on December 31, 1996. The Commission terminated the AFOR as of May 1, 1996, because of service quality problems. Under the terms of the AFOR, USWC was required to submit a general rate filing pursuant to ORS 759.180 at least nine months before expiration of the AFOR. USWC filed its general rate case on December 18, 1995. USWC’s rates have been interim rates subject to refund with interest since May 1, 1996.

the current interim rate level, assuming that the latter amount of revenues is greater than the former.” Specifically, the Commission ordered, at 5, that “the annualized test year from January 1 to September 30, 1995, as modified by adjustments ordered in docket UT 125, shall be used to determine whether [USWC] overearned during the period from May 1, 1996, to the effective date of rates established in docket UT 125.” USWC believed that this decision contravened the plain language of the AFOR order and increased USWC’s potential refund liability. Accordingly, USWC appealed Order Nos. 96-183 and 96-286 (the order denying reconsideration) to the Circuit Court of Marion County. The Circuit Court affirmed the Commission’s orders and USWC appealed to the Court of Appeals, where the action is still pending. This appeal is referred to as the Refund Methodology Appeal. Both sets of appeals together are referred to as the Appellate Litigation.

At present, USWC’s rates have been interim rates since May 1, 1996. USWC’s ratepayers have received no refund, although the Commission ordered one nearly three years ago. The Appellate Litigation is pending, and if USWC prevails, there is a possibility that ratepayers will receive no refund.

Settlement negotiations began in November 1998 in an effort to resolve the revenue requirement phase of the case and proceed to the rate design phase. USWC, Commission Staff (Staff), Citizens’ Utility Board (CUB), and American Association of Retired Persons (AARP) attended all negotiation sessions. On August 5, 1999, Staff and USWC reached a settlement in principle. They drafted a Stipulation that was executed on September 9, 1999. Negotiations took ten months, in part because USWC and Staff were originally almost \$50 million apart in their positions.

As detailed below, the Court of Appeals partially lifted the stay and held the Appellate Litigation in abeyance for the purpose of permitting the Commission to consider the Stipulation. The Stipulation is also designed to resolve the issue of refund methodology from UT 80. On November 8, 1999, Staff filed testimony and exhibits in support of the Stipulation. USWC filed testimony in support of the Stipulation on November 12, 1999. CUB, Western States Competitive Telecommunications Coalition (WSCTC), AT&T, and Telecommunications Ratepayers Association for Cost-based and Equitable Rates (TRACER) filed testimony opposing the Stipulation in whole or in part. No party required cross-examination of any other, so no hearing was held. All parties who filed written testimony on the Stipulation executed a stipulation to admit testimony and exhibits filed with respect to the Stipulation. That stipulation to admit testimony and exhibits was filed February 9, 2000, and all testimony and exhibits covered by the stipulation are part of the record in this case. The parties that submitted testimony filed briefs, as did AARP and Teligent, Inc.

**The Stipulation.** The Stipulation reached between Staff and USWC in resolution of the Appellate Litigation is attached to this order as Appendix A. The Stipulation entails a number of changes to the findings and conclusions of the Commission’s Phase I rate case order in UT 125, Order No. 97-171, which is rescinded by this order. Appendix B to this order, based on the testimony of Staff witness Terry Lambeth, details the revenue requirement effects of the Stipulation on USWC’s Oregon intrastate revenue requirement. Appendix B is based on Appendix A to Order No. 97-171.

The Stipulation consists of three parts:

- A. An agreement on procedures to implement the Stipulation;
- B. A description of and procedures for distributing the refund; and
- C. A description of and procedures for implementing a temporary bill credit pending implementation of a final rate design in UT 125.

*A. Procedures to Implement the Stipulation.* In July 1997, the Circuit Court entered a stay of all proceedings pertaining to Order No. 97-171. Before the Stipulation could be presented to the Commission, the Court of Appeals had to lift the stay for purposes of allowing the Commission to consider the Stipulation. On November 4, 1999, the Court of Appeals granted the joint motion of USWC and the Commission to lift the stay and allow the Commission to consider the Stipulation.

If the Commission rejects or modifies the Stipulation, both Staff and USWC have the right to withdraw from their agreement. If this occurs, the Appellate Litigation would resume. If the Commission adopts the Stipulation, the Commission and USWC will jointly move the Court of Appeals to dismiss the Appellate Litigation.

If the Commission approves the Stipulation, USWC agrees to implement the refund and temporary bill credits within 45 days after the Commission disposes of any motions for rehearing or reconsideration. Once the Commission disposes of any such motions, USWC is obligated to implement the refund and temporary bill credits despite pendency of any appeals of this order.

*B. Description of and Procedures for Distributing the Refund.* USWC will make a one-time refund of revenues to its Oregon local and access customers. The total amount, set forth in Exhibit A to the Stipulation, varies from \$222.7 to \$272.8 million, depending on the date of the refund. Oregon local service customers who subscribe to the services shown on Exhibit A, page 2 of the Stipulation will receive 86.2 percent of the refund, in the amounts derived in accordance with the methodology illustrated in that exhibit.

To be eligible for a refund, local customers must be on the USWC network as of the date of the refund and have had service 60 days prior to the refund date. Local customers will receive their refunds on a per-line basis and the amount per line will be determined by the type of service on each line. Local customers will receive their refunds in the form of a bill credit.

The refund to interexchange carriers (IXCs) is shown on Exhibit A, page 1. The amount due each IXC is based on the ratio of USWC's billed intrastate switched access revenues from each IXC to the total USWC intrastate switched access billed revenues during the 12 months immediately preceding the refund date. Refunds to IXCs will be by check.

The amount of the refund is given in a range because Staff and USWC did not know exactly when the refund would be made. The amount each local retail customer receives depends on which eligible service the customer subscribes to, the number of customers who subscribe to the eligible services, and the date of the refund. Because of the variables, the Stipulation requires USWC to calculate the refund as near as possible to the date of the refund. Carrier access customers will receive 13.8 percent of the total refund, the same percentage as in Order No. 97-171.

The Stipulation protects USWC from issuing double refunds in case a Commission order approving the Stipulation is reversed or modified by a court. It also guarantees that any subsequent additional refunds would be subject to interest at the current authorized rate of return.

No later than 45 days after the Commission disposes of any petitions for reconsideration of this order, USWC will issue the refund. At its sole discretion, USWC may make the refund earlier if it so chooses. The services subject to refund are the same as those specified in Order No. 97-171.

*C. Temporary Bill Credit.* Beginning from the date of the refund and extending until permanent rates become effective, as determined in the rate design phase of this docket, USWC will use bill credits and switched access rate reductions to reduce the company's revenues by \$63 million per year. This calculation is made in reliance on USWC's local billing units as of August 31, 1997, and USWC's carrier common line minutes of use for the five months preceding and six months following August 1997. The actual effect of the reduction in revenues will be greater than \$63 million because of the company's growth since 1997.

The services eligible for the temporary bill credits are the same as those that receive the one time refunds. Exhibit B to the Stipulation calculates the temporary bill credits. These are \$1.85 for a private line, \$2.47 for residential and Centrex lines, \$5.93 for a simple business line (1FB), and \$6.68 for complex business line. Switched access customers will receive temporary rate reductions in both originating and terminating carrier common line charges.

The refund is a separate item from the temporary bill credits. The refund is a return of revenues collected from customers, made in settlement of potential liability to make refunds at some future date. The bill credits reflect a reduction going forward in revenue requirement pending conclusion of the rate design portion of this docket.

**Parties' Positions.** *AARP* opposes both the content of the proposed settlement and the process by which settlement was reached. *AARP* believes that Order No. 97-171 is reasonable and in accordance with applicable law. *AARP* opposes reducing the refund amount as a transfer from ratepayers' to USWC's pocket. *AARP* also takes issue with the fact that the agreement allows USWC to add new plant to its rate base, a decision that accounts for 85 percent of the change in revenue requirement. *AARP* notes that Staff's agreement includes no mechanism to monitor whether USWC uses its additional plant to improve service quality.

Finally, AARP has concerns with the proposed reduction of the interest rate to be applied to the outstanding ratepayer refund, from 11.2 percent in Order No. 97-171 to 8.77 percent in the proposed Stipulation. According to AARP, the reduction amounts to a \$10 million reduction of the total refund.

*CUB* opposes the Stipulation in general. According to *CUB*, the Stipulation is the result of political pressure and does not benefit customers. *CUB* argues that the proposed settlement gives away the fairly determined refund and revenue reduction determined in Order No. 97-171.

*CUB* asserts that this is the last traditional rate case USWC will ever see. Therefore, *CUB* claims that customers will live with the decisions in this case until the legislature or the voters reset prices. *CUB* questions whether the speed of settlement is worth the reduction in customer benefits, since anything given away might never be returned to customers.

*CUB* believes that USWC brought political pressure to bear on the Commission to settle the case rather than to proceed in such a way as to analyze issues in the best interests of customers. Specifically, *CUB* believes that USWC tried to use Senate Bill 622 (SB 622) as a mechanism for settling the case and withdrew its legislative proposal only because it was assured that the rate case would be settled at an acceptable revenue requirement reduction.

*CUB* contends that the Stipulation violates the agreement among *CUB*, TRACER, USWC, and Staff that was adopted by Order No. 96-107. There, the parties agreed that the interest rate on the refund would be 11.2 percent. Here, Staff and USWC propose an interest rate of 8.77 percent, constituting a dollar value difference to customers of \$15 million (assuming a refund of \$58 million).

*CUB* asserts that Staff has violated the used and useful standard set out in ORS 759.285<sup>2</sup> by including in rates additional plant investments made between May 1996 and December 1998. Staff argues that it is too difficult to adjust a future test year, but *CUB* disagrees, pointing out the Commission used a future test year in the PGE rate case, UE 88, but did not include the Coyote Springs plant in that test year. Coyote Springs was added to rate base in UE 93, after it came on line. Finally, *CUB* contends that it is inappropriate to adopt 40 new adjustments to the rate case, as Staff has done, without extending the proceeding and allowing parties to review work papers, submit data requests, and respond.

*CUB* objects to the proposed refund procedure and to the amount of the proposed refund in the Stipulation. Staff's evidence submitted in support of the Stipulation arrives at a \$58 million figure for the refund, not the \$53 million Staff now proposes. *CUB* acknowledges that the reduction going forward is set at \$63 million per year, an increase of \$5 million over the \$58 million figure, but argues that this is not a

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<sup>2</sup> ORS 759.285 provides: "No telecommunications utility shall, directly or indirectly, by any device, charge . . . rates which are derived from a rate base which includes within it any construction, building, installation or real or personal property not presently used for providing utility service to the customer."

fair trade, because we do not know how much of the rate reduction going forward will flow to customers and how much to shareholders. CUB claims that some of the revenue reduction actually covers competitive losses experienced by USWC. If price reductions are applied to services that are shrinking, the value to customers as a whole declines.

*AT&T* proposes only one change to the Stipulation. *AT&T* urges the Commission to adopt a time frame other than the 12 months proposed in the Stipulation to more appropriately distribute the refund amount intended for the interexchange carriers. *AT&T* proposes this change to reflect the state of the IXC market over the time frame during which overpayment of access charges occurred.

*AT&T* recommends that the Commission adopt a time period beginning on May 1, 1996, and running up to the date of the refund, as originally contemplated in Order No. 97-171, to allocate the refund amounts to the IXCs. As currently proposed, the refund would be based on the amount the individual carrier paid USWC for access service over the 12 months preceding the refund date.

*AT&T* argues that the current refund proposal would treat disparately situated IXCs the same by allowing a refund over the same one-year period for later and earlier entrants into the market. *AT&T* argues that the Commission should seek to reimburse customers who were assessed excessive charges. *AT&T*'s recommendation is simply to use a longer period (from May 1, 1996, to the date of the refund) to allocate the refunds due to IXCs. The recommendation would not change the total amount of refund due to IXCs.

*The Northwest Payphone Association* (NPA) asks the Commission to condition approval of the Stipulation on USWC agreeing to a refund methodology that provides for refunds to former customers of USWC. Customers who have switched to competitors should receive refunds to avoid any anticompetitive distortion of the market. NPA fears that prospective refunds create an incentive to delay or curtail a change in competitive providers. Customers might remain on USWC's system rather than switch to a competitive local exchange carrier (CLEC), simply to receive the refund.

NPA argues that former customers should be allowed to file claims for refunds or that the Commission should require USWC to locate and notify former customers. NPA asserts that if USWC were to publish notices and permit former customers to file claims for refunds, the expense and burden would be fairly minimal.

NPA contends that even if no other class of former customer receives refunds, former Public Access Line (PAL) customers should receive them. USWC bills are a large portion of payphone service providers' expenses. Moreover, payphone service providers are more likely than residential and other business line customers to be former customers of USWC at least as to some of their lines.

NPA finally maintains that federal law may require USWC to provide refunds to payphone service providers. In its payphone orders, the FCC required local exchange companies including USWC to file cost based PAL rates. USWC was given a waiver excusing it from having the new rates in place by April 15, 1997, provided they

issue refunds to payphone service providers if the state Commission ultimately approves a rate lower than the rate filed by the local exchange company or the rate it had in place on April 15, 1997. *Order on Reconsideration, Re Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket 96-128, FCC 96-439 (1996); Order, CC Docket 96-128 (DA 97-678 (1997)). NPA notes that the record does not clarify whether USWC would contend that its 1997 PAL rate is appropriately cost based.

**Teligent** argues that the refund mechanism proposed in the Stipulation will have an anticompetitive impact, would create a barrier to competition, and is inconsistent with the representations USWC made to the Marion County Circuit Court. Moreover, Teligent asserts that the proposed Stipulation would discriminate against USWC's former customers, including those who are now customers of CLECs.

Teligent contends that former customers who have left the USWC system would be punished for switching to a competitive alternative. Thus the proposed refund mechanism is unfair to former customers who are no longer on the system and to customers of longer standing, while it rewards new customers who did not overpay as much as the older customers did. Even worse is the bill credit, according to Teligent, because it gives CLEC customers an incentive to return to USWC. Thus, Teligent argues, USWC can delay and hamper competition for an additional 45 days after the Commission adopts the Stipulation, thereby creating a new disincentive to customers to leave USWC for a CLEC.

Additionally, Teligent believes that the refund mechanism raises legal issues under §253(a) of the Telecommunications Act of 1996 (the Act). That section provides: "No State or local statute or regulation, or any other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." 47 USC §253.

Teligent asserts that the fact that there is no concrete evidence in the record of anticompetitive effects should not be the determinant on this issue. Teligent argues that the incentives and disincentives for competition are obvious.

Teligent maintains that USWC made representations to the Marion County Circuit Court that are inconsistent with the refund mechanism in the Stipulation. USWC represented that it would make reasonable efforts to pay any refund to its customers as of May 19, 1997. Teligent urges the Commission to adopt the refund procedures articulated in the Superior Court of King County review of USWC's general rate case in Washington State. There, USWC was required to give refunds to former customers by advertising the availability of refunds for former customers each day for one week. The court also ordered USWC to allow at least 60 days for the former customers to submit their refund claims.

**TRACER** also argues against the proposed refund mechanism. The proposed refund procedure, according to TRACER, is anticompetitive and unfair to customers who have been overcharged and have left the system or who have been on the system longer than customers who joined the system in time to qualify for the same

refund. TRACER fears that customers may delay or opt against changing service providers because of the refund mechanism. TRACER also urges the Commission to advertise the availability of the refund to all past customers or present customers about to change service providers. This would increase the costs associated with issuing the refund but TRACER believes the benefits merit the increase. Like Teligent, TRACER recommends some version of the Washington State general rate case refund provisions.

*WSCTC*, whose members consist of Electric Lightwave, Inc.; GST Telecom Oregon, Inc.; Advanced TelCom Group, Inc.; Shared Communications Services, Inc.; Advanced Telecommunications, Inc.; Global Crossing Telemanagement, Inc.; and Global Crossing Local Services, Inc., believes that the refund mechanism in the proposed Stipulation creates a barrier to competition and results in anticompetitive effects for CLECs. *WSCTC* recommends an alternative refund mechanism to diminish the Stipulation's anticompetitive harms by ensuring that former USWC customers who have switched to CLEC services receive their refunds without being forced to switch back to USWC.

As to the proposed refund for Centrex services, *WSCTC* recommends that the Commission amend the proposed refund ratio for resellers from 1.00 to 2.40 to reflect the special circumstances that surround Centrex resellers. *WSCTC* has in mind the \$5.40 per line surcharge to which Centrex resellers are subject. *WSCTC* also advocates treating Centrex resellers on a par with business simple (1FB) customers.

As to the proposed refund mechanism, *WSCTC* points out that CLEC customers must return to USWC to receive the refunds they are owed. Staff's and USWC's proposals for speedy refunds do not address the CLECs' concerns. *WSCTC* argues that if all USWC customers, including former customers now taking service from CLECs, are made eligible for the refund, a slight delay in processing the refund will not matter. *WSCTC* proposes that USWC issue refunds to current customers and also to those former customers who have overpaid during the period in question and who have switched to a CLEC in the meantime. CLECs should be permitted to notify their customers that the customers should contact USWC to receive the refunds owed them. USWC should be required to notify its current customers through a billing insert that the customers may elect to receive a check rather than a billing credit for their refund. Further, USWC must explain that checks must be issued for any remaining balances if the customer elects to switch to a CLEC.

*USWC* argues in favor of the Stipulation, maintaining that it is in the public interest. *USWC* points out that its current rates have been interim for almost four years, leading to uncertainty for both USWC and ratepayers. *USWC* also notes that the Commission's initial order (Order No. 97-171) has been reversed in the Circuit Court and is currently on appeal. Moreover, ratepayers face the possibility of receiving a smaller refund, or none at all, if litigation proceeds. Third, the uncertainty of USWC's current rates impedes the development of competition by delaying implementation of rates more suitable to a competitive environment. The same uncertainty impedes USWC's ability to make needed investment decisions. All these issues would be put to rest by adopting the Stipulation.



USWC contends that the amounts of the refund and the rate reduction in the Stipulation are well within the range of reasonableness. Since the possible outcomes of continued litigation range from no refund and a rate increase to the original figures in Order No. 97-171, the figures of the Stipulation represent an outcome clearly consistent with the public interest. USWC also points out that it made a major concession in agreeing to make refunds prior to all appeals of the order on the Stipulation having run their course. USWC acceded to Staff insistence that the timing of the refund was critical and that refunds be issued despite any appeals.

In response to CUB's allegations that the Stipulation is the result of political pressure, USWC notes that CUB has provided no evidence in support of its position. USWC also refutes CUB's assertion that the financial terms of the proposed settlement are unreasonable and do not stand up to normal rate case scrutiny. USWC argues that the terms are within the reasonable range and are even skewed in favor of ratepayers. CUB, according to USWC, ignores the fact that one reason the Circuit Court gave for reversing Order No. 97-171 was because the Commission failed to use normal rate case scrutiny. Specifically, USWC believes that adjustments that forecast changes in revenues and expenses to the mid point of a future 32-month period have not appeared in prior USWC rate cases and were not used in UT 141, the GTE rate case.

In defense of the refund methodology, USWC points out that it is substantially the same as set forth in Order No. 97-171. USWC states that its refund is limited to current customers because it does not have readily available (online) records for customers who leave the system. The effort of reviewing each monthly bill for each customer back to May 1996 could be a massive manual undertaking.

USWC notes that the 60-day cutoff period is based on Staff's desire to discourage customers from subscribing to additional lines immediately before the refund date simply to receive a larger refund. Given the size of the potential refund, such a limitation is a practical response to customers who may attempt to procure an unwarranted windfall.

Alternative refund methodologies, according to USWC, fail to conform to the circumstances. Proponents of these methodologies do not address the practical problems each alternative would entail. USWC also points out that until the rate design phase of the case is completed, there is no evidence that any particular customer has paid USWC too much for telephone service. Finally, USWC notes that resellers may pass on the refunds they receive from USWC to their end users to mitigate the perceived unfairness of the mechanism.

In response to AT&T's argument that the refund should be allocated to IXCs based on relative revenues from May 1, 1996, to the date of refund, USWC points out that this proposal would increase AT&T's refund at the expense of other IXCs.

USWC characterizes TRACER's proposed refund procedures as complex and laborious. It would result in a delay of several months in refunds, besides being very expensive. USWC objects that there is no evidence on which to conclude that the

proposed procedure is anticompetitive. USWC again points out that reseller CLECs can pass the refunds on to their customers.

USWC opposes WSCTC's proposed method of granting customers refunds in the form of a check. USWC argues that this process would aggravate anticompetitive delay and increase the costs and burdens of implementing the refund. It would take over 30 days to prepare notices and notify customers that they have the option of receiving checks. That would require USWC to wait at least 30 days for responses. Then USWC would begin the cycle of issuing checks or billing credits, which takes another 30 days. This additional time would aggravate the situation that WSCTC thinks should be mitigated.

*Staff* recommends adopting the Stipulation in its entirety. Staff notes that the Stipulation, if adopted, would:

- Settle and resolve the appeals of the Commission's orders in UT 80 and UT 125 currently pending before the Oregon Court of Appeals;
- Reduce USWC's annual Oregon intrastate revenue by \$63 million from current rates (based on August 1997 billing units for local services and the minutes of use for the five months preceding and six months following August 1997, for switched access services);
- Produce a refund to current customers of \$53 million per year for the period May 1, 1996, to the date of the refund. The billing credits in aggregate would include interest at a rate of 8.77 percent compounded monthly.
- Provide temporary bill credits in the amount of \$63 million per year on a going forward basis, until the Commission sets permanent rates for USWC in Phase II of this docket.

In response to CUB's opposition to the Stipulation, Staff argues that the settlement is not driven by political pressure. CUB speculates that Staff and USWC agreed to settle the rate case at a reduced level if the Legislature would drop from SB 622 provisions that would have limited USWC's liability in the rate case. Staff points out that the timing of the various events precludes CUB's allegations. The Legislature had no assurance that there would be a settlement when it passed SB 622, and the Governor signed the bill before he knew the rate case was settled. A settlement in principle was achieved August 5, 1999, and the Stipulation was signed on September 9, 1999.

According to Staff, a more plausible explanation of why the liability limitation provisions were removed from SB 622 is that the Governor's office as well as the Commission and CUB opposed their inclusion in SB 622. Settlement negotiations between Staff and USWC resumed in June 1999, only after USWC had increased its settlement offer from a \$28 million revenue reduction to a \$50 million reduction. Finally, Staff notes the lengthy settlement negotiations and the fact that the final revenue requirement settlement (a reduction of approximately \$58 million, considering the \$53 million refund amount and the \$63 million permanent revenue reduction) is substantially above the \$50 million that USWC offered in May 1999. These factors belie

CUB's theory that USWC and the Commission reached a political settlement in exchange for removal of the rate case from SB 622.

Staff also maintains, against CUB's contentions, that the revenue requirement settlement is reasonable and supported by substantial evidence. Staff reports that it had two self-imposed constraints in its settlement negotiations with USWC. First, it was unwilling to withdraw the adjustments to USWC's base case adopted in Order No. 97-171 that it strongly felt were proper adjustments. Second, it would not agree to a revenue requirement number that produced an unreasonable rate of return for USWC. Thus, Staff revised several of its test year adjustments in Order No. 97-171 to arrive at the revenue requirement settlement amounts. About 85 percent of the total revenue requirement change from Order No. 97-171 is attributable to documented plant additions USWC made between May 1996 and December 1998. Most of the remaining amount of revenue requirement change is attributable to Staff's revised recommendations about the imputation of directory revenues to USWC.<sup>3</sup>

Settlement would produce a return on equity of 10.2 percent and a return on rate base of 8.77 percent. These are the returns authorized in Order No. 97-171. Staff contends that some of CUB's arguments, if adopted, would result in lower refunds and benefits for USWC's customers than they would receive under the Stipulation.

CUB disagrees with the Stipulation's reduction of the interest rate on the utility's refunds to customers from 11.2 percent to 8.77 percent. Staff points out that the Commission ordinarily prescribes a utility's current authorized rate of return as the interest rate for refunds. Here, that figure is the 8.77 percent contained in the Stipulation.

Second, Staff argues that under the Stipulation, the reduction in USWC revenues going forward in effect amounts to \$68 million rather than \$63 million, a reasonable trade for the lower interest rate on the refund. The \$5 million difference in effective and nominal revenue reductions results because August 1997 was the midpoint of Staff's review period for developing adjustments. Using two-year-old billing units and minutes of use effectively raises the revenue reductions in 2000 by \$5 million.

Third, the agreement on the lower interest rate was one element of the Stipulation that will accelerate the beginning of the rate design phase in this docket. Under the Stipulation, paragraph 2(a), USWC was to file its rate design proposal by December 6, 1999 (in fact, USWC filed in November 1999), many months sooner than if the Commission waited for a final Court of Appeals or Supreme Court decision.

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<sup>3</sup> For settlement purposes, Staff made two changes to its imputation recommendations. First, Staff updated the adjustment in Order No. 97-171 to use the retention rate from Docket UT 102, which has been in effect since January 1, 1992. This modification increased the annual intrastate revenue requirement in Staff's proposed test year by \$4.9 million. Second, Staff removed foreign directories from the revenue imputation because they are not sold to USWC's customers. That treatment is consistent with the stipulation in UT 141 for GTE Northwest Incorporated in Order No. 98-388. This increased USWC's annual intrastate revenue requirement in Staff's proposed test year by \$0.3 million.

In support of the refund mechanism set out in the Stipulation, Staff notes that the procedures are virtually the same as in Order No. 97-171. Staff notes that intervenors who raise the issue of unfairness with respect to the procedures assume that specific customers or customer groups have overpaid USWC since May 1996. Staff points out that absent a Commission order in this docket assigning permanent rates to various telecommunications services, there is no basis for an assertion that any particular customer has overpaid USWC.

In response to parties who assert that USWC should make refunds to customers who have left its system, Staff notes that USWC as a practical matter cannot keep track of customers who leave the network. Staff opposes giving customers notice and allowing them to file claims. In 1992, Staff points out, it and USWC attempted to notify former USWC customers of a refund in UT 85. That attempt added substantial time to the process and benefited relatively few customers. Staff argues that the method it has proposed for distributing refunds is administratively efficient and is the optimal way of ensuring that USWC returns to its customers, generally, the company's excess revenues since May 1996.

In response to TRACER, which urged a weighted or pro rata refund approach, Staff notes that USWC does not maintain automated records back to May 1996, which would make TRACER's proposal highly unwieldy and time consuming.

Staff makes three responses to charges that the proposed refund mechanism is anticompetitive. In reply to TRACER and other intervenors who argue that customers awaiting refunds may stay with USWC to receive them, Staff responds that the sooner the refunds are made, the smaller the anticompetitive effect will be. Staff also points out that once USWC's customers receive their billing credits, they are free to terminate their USWC service, receive a check from USWC for the balance of their refund, and choose a different service provider. Finally, Staff notes that reseller CLECs will receive refunds on the same basis as USWC's end user customers and will be able to pass the refunds through to their customers.

WSCTC asks that customers be allowed to receive their refund in the form of a check. Staff points out that notice to customers of their right to request a check would entail allowing time for notice, time for customers to respond, and time for USWC to cross check its records so that it did not issue double credits. USWC would be unable to proceed with bill credits until after it was certain which customers preferred to receive checks.

Finally, Staff opposes AT&T's proposal that the refund to IXCs be based on the amount paid to USWC from May 1, 1996, to the date of the refund. The Commission's intent in Order No. 97-171 was to direct refunds to current customers based on their current service demand. The Stipulation reflects that intent by providing that each IXC will receive an amount based on the ratio of USWC's billed intrastate switched access revenues from each IXC to the total USWC intrastate switched access billed revenues during the 12 months immediately preceding the refund date. Staff contends that the use of access minutes over a year preceding the refund date is a

surrogate for the number of lines in use by a current customer as of the refund date. The refund mechanism is not designed to reflect possible overpayments by IXC's from May 1996 to the present.

**Discussion.** It is critical that we be able to proceed with the rate design phase of UT 125 without further delay. That will allow us to set the permanent rates of USWC's regulated telecommunications services. The last comprehensive rate design order for USWC was entered in 1990. Since then, Congress and the Oregon Legislature have both passed laws to promote development of competitive telecommunications markets—the 1996 Telecommunications Act and SB 622. We must establish a rate structure for USWC that more fully promotes the objectives of those laws. If the UT 80 and UT 125 appeals are not settled, those appeals could continue and delay the rate design phase of UT 125 for several more years.

Moreover, adopting the Stipulation would eliminate the litigation risks associated with those appeals. The outcome of litigation, especially in complex and highly technical cases, is uncertain. We note that several of the hotly disputed issues in the underlying UT 125 appeal involve tens of millions of dollars (imputation of directory revenues, plant investments and related costs, service reengineering costs, and service quality issues). Therefore, although the revenue reduction in the Stipulation is substantially less than the \$97.4 million revenue reduction in Order No. 97-171, if a court reversed us on any or all of the issues listed above, the reduction could be significantly less than the \$63 million USWC and Staff have settled upon.

In the following, we respond to the parties' objections to the Stipulation. We note at the outset, however, that a settlement necessarily represents a series of tradeoffs. Because we believe that the tradeoffs in the Stipulation benefit ratepayers more than they disadvantage them, we support the Stipulation for the most part. The benefit of settlement itself, in this context, is considerable, and the overall result is just and reasonable. We further note that Staff has preserved critical adjustments to USWC's rate case and has preserved the basic refund mechanism from Order No. 97-171.

*Procedural Concerns.* AARP and CUB challenge the process by which the proposed settlement was reached. CUB in particular alleges that the Stipulation is the result of political pressure. We find no evidence in the record to support this view, and believe that the timing of events (the Governor signed SB 622 before the Stipulation was signed, and the Legislature passed SB 622 before there was even a settlement in principle) supports the position that the Stipulation is not politically tainted. Like Staff, we find it much more likely that negotiations with USWC were resumed and successfully concluded because USWC came back to the table with a \$50 million revenue reduction offer.

*Staff's adjustments.* AARP takes issue with the fact that one of Staff's adjustments is to allow USWC to add new plant in its rate base for the purpose of improving service quality, with no mechanism in place to monitor whether USWC uses its plant to improve service quality. We find Staff's adjustment reasonable. We have made our dissatisfaction with USWC's service quality public in the past; it would be counterproductive to disallow additional plant to improve the quality of service. While

we do not have a specific mechanism in place to monitor how USWC deploys its plant, we do have service quality monitoring in effect and are satisfied that our service quality requirements serve as a proxy for monitoring the use to which USWC puts its plant. We also note that in view of USWC's recent held order problems, any plant addition that leads to deployment of a desired service on time is a service quality improvement.

CUB challenges Staff's inclusion in rates of additional plant investments made between May 1996 and December 1998, as violating the used and useful standard of ORS 759.285. We do not agree that this inclusion violates ORS 759.285. In contradistinction to Coyote Springs in UE 88, this plant is already in use. Staff proposes using an updated rate base that contains only documented plant additions.

CUB also objects to Staff's making numerous adjustments to the rate case without extending the proceeding and allowing parties to review work papers, submit data requests, and respond. We find that the process provided adequate time for CUB to file two rounds of data requests and review all work papers prepared by Staff in support of its adjustments. In addition, we have reviewed Staff's testimony about its adjustments and find that they were made reasonably and prudently and were based on substantial evidence. The purpose of a settlement is to take issues out of dispute; in this case, the Commission is satisfied that those issues have been resolved in the public interest.

CUB also contends that it is inappropriate to adopt 40 new adjustments to the rate case. We find that Staff has not proposed an unreasonable number of new adjustments. Some of its adjustments, moreover, result from the circular effects of revised or new adjustments on all other adjustments. The record shows that the changes in Issue 8f (ORS 291.349, income tax refund) and Issue 8n (PUC fee increase) affected Issue 1b. In turn, the change in Issue 1b (net to gross factor) affected the revenue requirement of many adjustments. The change in Issue 3a affected Issue 3b (directory revenue growth). The addition of Issue 9d (new plant additions) affected Issue 9c (service quality). All the changes affected Issue 10 (final test year separation factors).

*Amount of Refund.* CUB's final objection to the Stipulation<sup>4</sup> is the amount of the proposed refund which, CUB argues, should be \$5 million higher annually than the Stipulation's \$53 million, based on Staff's case. We find that the tradeoff of a higher reduction going forward, as Staff explained, is reasonable. CUB's concerns about which services will bear the rate reduction will be addressed in the rate design phase of UT 125.

*Refund Mechanisms: IXCs.* We have reservations, however, about the Stipulation's refund mechanisms. AT&T's suggestion of a different time period than the proposed one-year period for the refund to IXCs appears reasonable to us. Rates have been interim and subject to refund since May 1996. It is not feasible to design a perfectly prorated scheme for distributing the refund money among IXCs, and it is not appropriate to prorate the refund amount until the rate design phase of this case is completed. However, we can more closely approximate an equitable distribution to the IXCs who have overpaid over a four-year period by using a four-year period for minutes of use. Administratively, it is much simpler to create an equitable solution with the IXCs,

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<sup>4</sup> CUB's objection to the interest rate of 8.77 percent rather than 11.2 percent is discussed below.

because there are few carriers involved. We adopt AT&T's proposal of using the minutes of use from May 1, 1996, to the date of the refund as the basis for the refund to the IXCs. As AT&T points out, this change does not affect the amount of the refund to IXCs. It affects only the distribution of the amount among IXCs.

*Refund Mechanisms: Payphone Providers.* Like the remainder of the intervenors, NPA challenges the Stipulation's proposed refund mechanism. NPA notes that federal law may require USWC to provide refunds to payphone service providers, based on the FCC payphone orders. NPA itself, however, notes that the record does not contain enough evidence to clarify whether USWC's 1997 PAL rate qualifies it for a waiver from the FCC. This is not an issue that can be decided on the record before us.

*Refund Mechanisms: Former Customers.* NPA, Teligent, TRACER, and WSCTC urge the Commission to include former customers in the refund procedure. Not to do so, the parties argue, is to punish customers for switching to a competitive alternative.<sup>5</sup> As USWC and Staff have pointed out, the greater anticompetitive effect would come from delaying the rate design phase of the case. Any of the mechanisms for including former customers in the pool of recipients of the refund proposed by NPA, Teligent, TRACER, and WSCTC would delay the rate case.<sup>6</sup> Each of these proposed mechanisms is also cumbersome and will increase the time and expense of issuing the refund. Moreover, reseller CLECs are free to pass their refunds through to their customers, thus rewarding customers for switching to a competitive alternative.

We are sensitive, however, to the situation of USWC customers who ceased taking service before the refund cutoff date. The refund mechanisms proposed by NPA et al. are administratively unwieldy, but we believe that some way of allowing this group of customers to share in the refund is desirable. Numerous customers, large and small, have likely left the system in the nearly four years since rates have been interim, and some of those who left took service from USWC for a substantial period. Accordingly, we adopt a plan to return money to some of the customers who have left the system. This plan will permit some recovery of the refund by former USWC customers and will not delay the refund to customers currently on the system.

We will order USWC to set aside 5 percent of the local refund amount to return to customers who were customers of USWC for at least six months during the period from May 1, 1996 to the date of the refund bill credits (the Fund). We choose 5 percent as the set-aside figure because in our UT 85 refund experience, 1.8 percent of the total amount was refunded through the claim process. In this case we are dealing with a larger amount of refund and a longer period covered by the refund. Therefore, 5 percent seems a reasonable figure to designate for the refund to customers no longer on the system. The remaining 95 percent of the refund amount will be issued as bill credits

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<sup>5</sup> Teligent also argues that the refund mechanism may raise legal issues under §253(a) of the Act. We reject Teligent's contention. Nothing about the refund mechanism effectively or actually prohibits any entity from providing telecommunications service.

<sup>6</sup> The same argument persuades us that it is preferable to allow local customers their refund in the form of bill credits rather than giving them the option of a check initially. See Staff's discussion of this issue above. As Staff and USWC point out, customers may ask for a check for any unused bill credit at any time after the initial credit, receive a check, and leave the USWC system at that point.

to local retail customers as described in the Stipulation. The timing of the refund to these customers will be as described in the Stipulation.

Former USWC retail customers who were customers for at least six months between May 1996 and the day the last refund bill credit is given are eligible for a refund. We choose to make a refund to customers of six months or longer for two reasons. First, we recognize that former customers who received less than six months' worth of service may have incurred some loss, but it is not substantial. We have designed a procedure to recognize substantial claims, those involving six months or more of service. Second, we will allow USWC to recover its costs of administering the refund to former customers. By limiting claims to customers with at least six months of service, we reduce the number of claims, reduce small claims, and keep administrative costs relatively low so that more of the Fund goes to customers than to administration costs.

The refund amount will be the same for the former customers as for retail customers still on the system. If a customer subscribed to multiple lines during the eligibility period, the customer's refund will be limited to the number of lines the customer had on the last day the customer was on the system. If a customer had more than one line sequentially during the eligibility period, because the customer moved and changed telephone numbers, for instance, the customer would be eligible for only a single line refund.

We will require USWC to advertise widely in newspapers throughout Oregon that former retail customers who were USWC customers for at least six months can apply to USWC for a refund from the Fund. USWC is to run quarter page ads in the following Oregon newspapers to provide statewide coverage:

Albany: Albany Democrat Herald  
Astoria: The Daily Astorian  
Baker City: Baker City Herald  
Bend: The Bulletin  
Corvallis: Corvallis Gazette Times  
Eugene: The Register Guard  
Grants Pass: Grants Pass Daily Courier  
Klamath Falls: Herald and News  
Medford: The Mail Tribute  
Pendleton: East Oregonian  
Portland: The Oregonian  
Roseburg: The News Review  
Salem: Statesman Journal

The ads will include information about the refund and a claim form to be clipped out, filled in, and mailed to USWC for a refund. USWC is also to publish a contact telephone number for customers who need claim forms or information about the refund. Four ads will run in each paper, one per week for four weeks. USWC is to establish and announce a contact telephone number at which potential claimants can receive information or request a claim form. The telephone number will be included in the notice of refund published in the newspapers.



On receipt of the claim form from customers, USWC will review the customer's claim and mail a check to the customer promptly, if the claim is verified. Staff and USWC will collaborate on developing language for the advertisements as well as the claim form that will be part of the advertisement. The form should contain language warning claimants of the consequences of filing a false claim.

Refunds from the Fund will be available until the Fund is exhausted. They will be paid in the order in which the claims are verified. The amount of the refunds will be the same as for retail customers who qualify for refunds under the terms set out in the Stipulation. Refunds from the Fund will be provided by check. The Fund will come into existence on the date USWC gives bill credits to its current local retail customers. It will remain in existence for a period of three months from its inception or until it is exhausted by claims. USWC will continue to pay interest on money in the fund at an annual rate of interest of 8.77 percent until the Fund ceases to exist. USWC will be allowed to recover the approved administrative costs associated with the Fund from the Fund pool.

After it is exhausted by claimants or after three months elapse, whichever comes first, the Fund will cease to exist. If there is a residue remaining in the Fund, it will be distributed as uniform bill credits during the next billing cycle after administrative costs have been verified and paid. All USWC retail customers of record at that time will receive an equal bill credit per line.

*Interest Rate.* CUB and AARP in particular object to the fact that the interest rate applied to the ratepayer refund is 8.77 percent in the Stipulation and was 11.2 percent in Order No. 97-171. The lower interest rate is one of a number of tradeoffs made for the sake of settlement. It is USWC's authorized rate of return, however, and is therefore a reasonable rate of interest. The Stipulation also represents a reasonable tradeoff between a lower interest rate and an accelerated start to the rate design phase of this case.

*Centrex Resellers.* WSCTC asks the Commission to amend the proposed refund ratio for Centrex resellers from 1.00 to 2.40 per line to reflect their special circumstances, particularly the surcharge. Centrex resellers have twice challenged the surcharge and the Commission has decided that the surcharge is justified. *See* Order No. 99-753 and discussions in Docket UM 909/UT 147. We are not convinced by WSCTC's arguments that Centrex resellers should be treated equally with business rather than equally with residential customers. We find that the pricing of Centrex station lines is far closer to prices paid by residential customers than by business customers. A more reasonable approach is to place Centrex customers on a par with residential customers, as the Stipulation does.

We conclude that the Stipulation, as modified above, is reasonable, is supported by substantial evidence in the record, is in the public interest, and should be adopted. The modifications above are reflected in the ordering paragraphs below.

**Modification of Order No. 96-107 (UT 80).** We modify Order No. 96-107 to change the refund interest rate from 11.2 percent to 8.77 percent. The discussion and procedures of that order remain intact.

**Rescission of Orders No. 96-183 (UT 80), 96-286 (UT 80), and 97-171 (UT 125).** To reflect the changes the Stipulation introduces, we rescind Order Nos. 96 183 (UT 80); 96-286 (UT 80); and 97-171 (UT 125). Portions of Order Nos. 96-183 and 97-171 are readopted in Order No. 00-191, entered on this date.

We set out below a summary of the issues in Order No. 97-171 that are modified by the Stipulation or readopted in Order No. 00-191.

- a) Issue 1, Test Year, pages 8-20, is readopted.
  - Issue 1b, Net to Gross Factors:
    - The discussion on page 9 is readopted.
    - The stipulated factors are weighted based on the revenue distributions used in settlement of Issue 11 below.
    - The factors shown in Order No. 97-171, Appendix A, page 21, are readopted.
    - The weighted net to gross factors from Appendix B, Lambeth/2, Column 4, of this order are added.
- b) Issue 2, Cost of Capital, the discussion on pages 20-37 of Order No. 97-171 is readopted.
- c) Issue 3a, U S WEST Direct Yellow Pages Revenue Imputation (*see* current order, Appendix B, Column 16), the discussion on pages 37-43 is readopted *except*:
  - USWC may continue to use the retention rate from UT 102, in effect since June 1992; and
  - Foreign directory revenues are removed from the imputation.
- d) Issue 3b, U S WEST Direct Yellow Pages Revenue Growth, the discussion on page 43 is readopted, but the amount in Appendix A, Column 16a, of Order No. 97-171 is amended to reflect the \$0.3 million reduction in growth due to exclusion of foreign directory revenues and the change in retention rate.
- e) Issue 4, Affiliated Interests and Corporate Allocations, the Issue 4 adjustments at pages 44-59 are readopted.
- f) Issue 5, UP 96 Sale of Exchanges, the Issue 5 discussion at pages 59-62 is readopted.
- g) Issue 6, Operating Revenues, the discussion at pages 62-68 is readopted.
- h) Issue 7, Employee Benefits, the discussion at pages 68-72 is readopted.
- i) Issue 8, Operating Expenses and Taxes, the discussion at pages 72-83 is readopted except as modified with respect to Issue 8f and Issue 8n. Issue 8o is added as shown in Appendix B to this order, Column 59. *See* Stipulation, Appendix A to this order, paragraph 12.
  - Issue 8f, ORS 291.349 Income Tax Refund: Staff modified adjustments at Issues 3 and 9 that affected taxable income. The Issue 8f discussion at pages 72-73 is readopted, but the amounts in Column 42 of Appendix A to Order No. 97-171 are amended as shown in Appendix B to the current order, Column 42.
  - Issue 8n, PUC Fee Increase: The discussion at page 83 is readopted, but the amounts in Appendix A, Column 49a, of Order No. 97-171 are amended as shown in Appendix B to the current order, Column 50.

- j) Issue 9, Service Quality and Reengineering:
- The findings regarding Issue 9a and 9b at pages 83-93 are readopted. In Order No. 97-171, Appendix A, the revenue requirement consequences of these issues are shown in Columns 50 and 51. In Appendix B to the current order, they are shown in Columns 51 and 52.
  - Issue 9c, Service Quality: Staff added Issue 9d, New Plant Investments and Related Costs, for settlement purposes. That addition changed the revenue requirement of Issue 9c. The discussion at pages 93-101 is readopted, but the amounts shown in Appendix A, Column 52, of Order No. 97-171 are amended to include the Issue 9d effects on the service quality adjustment. The new amount is shown in Appendix B to the current order, Column 53.
  - Issue 9d, New Plant Investments and Related Costs: Staff added rate base and related expenses to recognize investment made from May 1996 through December 1998, as shown in Column 54, Appendix B to the current order.
- k) Issue 10, Final Test Year Separation Factors: Staff modified adjustments at Issues 3a, 3b, and 9d for settlement purposes. Staff calculated the intrastate effects of each adjustment on the final separation factors. The discussion at page 101 of Order No. 97-171 is readopted, but the amounts shown in Appendix A, Column 53 of that order are amended as shown in Appendix B to the current order, Column 56.
- l) Issue 11, Refund Procedures: The discussion at pages 101 to 107 is readopted except: 1) the interest rate is revised; 2) the refund eligibility date is updated from May 19, 1997, to reflect the provisions of the Stipulation, Appendix A to this order, starting at 3; 3) we update the date when the refund will begin, in accordance with the Stipulation, *supra*; 4) we allow a refund for former customers; and 5) we allow temporary rate reductions and bill credits as provided in the Stipulation.
- Issue 11a, Amount of Refund: We revise the conclusions to allow refunds to be based on an amount lower than the adjusted test year revenue requirement.
  - Issue 11b, Interest Rate for Refund: The interest rate for the refund shall be 8.77 percent.
  - Issue 11c, Distribution of Refund: We update the refund eligibility date from May 19, 1997, to be consistent with the Stipulation, Appendix A to this order, Paragraph 1.
- m) Issue 12, Cash Flow; Issue 13, Business Valuation: These issues were combined in Order No. 97-171 at pages 107-113. The issues were part of USWC's argument that Staff's proposed revenue requirement was unreasonable. Because USWC agreed to a revenue requirement in the Stipulation, these issues are moot and are not readopted.
- n) Issue 14, Effect of UM 351 on access revenues: The discussion on page 114 is readopted.
- o) Ordering Paragraph 4f at page 115 of Order No. 97-171: distribution of the refund: This paragraph is readopted.

**ORDER**

IT IS ORDERED that:

1. The Stipulation, Appendix A to this order, is adopted as modified. The first section of Appendix A, entitled Refund, is replaced by the following text:

1. Refund. In consideration of the Commission's issuance of an order implementing the terms of this Stipulation, and upon the Commission's final disposition of any motions to rehear and/or reconsider said order, U S WEST agrees to make a refund of revenues, within forty-five (45) days of said final disposition, to its Oregon customers of record who subscribe to the services identified, effective for one month of billing cycles beginning on the date of the refund. The amount of the local refund shall be 95 percent of the amount corresponding to the date of the refund, as set forth in Exhibit A hereto. Except for interexchange carriers, each customer of record shall be entitled to the refund for each line, provided that (a) they are a customer of record to the services set forth in Exhibit A on the date of the refund; (b) the customer has subscribed to the service set forth in Exhibit A for at least sixty (60) days immediately prior to the date of the refund; and (c) in the event that the customer has more than one line, the refund shall be limited to only those lines which the customer of record has at the time of the refund and had subscribed to for the sixty (60) days prior to the date of the refund. In addition, the refund shall be subject to the following terms and conditions:

- a. With the exception of interexchange carriers and former customers, the refund shall be made in the form of a single credit to customers' bills and as follows:
  - i. The amount of an individual customer's refund, per line, shall be based upon the customer's class of service and shall be calculated in the manner set forth in Exhibit A, page 2 hereto, less 5 percent. In the event a specific customer does not exhaust the full amount of the refund in one billing cycle, the remaining, unused portion of the refund due the specific customer shall be carried over to the subsequent bill(s) until such time as the full amount of the refund has been credited to the customer.

- ii. The parties hereby recognize that the calculations set forth in Exhibit A hereto are preliminary. Final calculations, utilizing U S WEST's most current billing units, shall be performed as near as possible to the date of the refund.
  - iii. Bill credits made pursuant to the terms of the Stipulation shall be separately identified on customers' bills with the following notation: "One time refund per PUC Order."
- b. Refunds payable to interexchange carriers shall be made in the form of a check, and shall be based on the amounts paid to U S WEST for services provided over the period from May 1, 1996, to the date of the refund. The amount due to a carrier will be calculated based on a ratio of U S WEST's billed intrastate switched access revenues from the carrier to the total U S WEST intrastate switched access billed revenues during the period from May 1, 1996, to the refund date. Estimates of the total amount are set forth in Exhibit A. Again, the calculations set forth in Exhibit A are preliminary, and final calculations, using U S WEST's most current billing information, shall be performed as near as possible to the date of the refund.
- c. Refunds to former retail customers shall be made from a Fund consisting of 5 percent of the total amount designated for local retail customer refunds as calculated in Exhibit A.
- i. U S WEST shall publish notice of the Fund in the following newspapers once a week over a period of four weeks:

Albany: Albany Democrat Herald  
Astoria: The Daily Astorian  
Baker City: Baker City Herald  
Bend: The Bulletin  
Corvallis: Corvallis Gazette Times  
Eugene: The Register Guard  
Grants Pass: Grants Pass Daily Courier  
Klamath Falls: Herald and News  
Medford: The Mail Tribute  
Pendleton: East Oregonian  
Portland: The Oregonian  
Roseburg: The News Review  
Salem: Statesman Journal

Notice shall be a quarter page in size and shall include claim forms for customers to clip and submit. The notice shall include the information that claimants may not receive a refund because the Fund may be exhausted. Notice shall also include clear information on the deadline for submitting claims.

The claim form shall request information sufficient to allow USWC to verify the customer's claim of eligibility for the refund, such as customer name, telephone number(s), and dates of service.

USWC shall establish and announce a contact telephone number at which potential claimants can receive information or request a claim form. The telephone number shall be included in the notice of refund published in the newspapers.

Staff and USWC shall collaborate on developing language for the advertisements as well as the claim form that will be part of the advertisement. The form shall contain language warning claimants of the consequences of filing a false claim.

- ii. Customers who were retail customers of U S WEST for a period of no less than six months between May 1, 1996, and the date of the refund bill credit, who are no longer U S WEST customers, and who did not receive a refund bill credit, are eligible for a refund from the Fund. If customers subscribed to more than one USWC line for a six-month period between May 1, 1996, and the date of this order, they will receive refunds for each line to which they subscribed simultaneously, provided they subscribed for six months or more. Customers who had a varying amount of lines will be limited to the number of lines the customer had on the last day the customer was on USWC's system.

Customers shall receive only one refund for multiple lines to which they subscribed sequentially, as would be the case if a customer moved residences within USWC's service area and switched to a new account at the new address.

Refund to these former customers shall be made by check. The base amount of the refund shall be the same as for retail customers still on the system. If the Fund is exhausted by claims against it, claims made after its exhaustion will not be paid.

- iii. Claims against the Fund will be paid in the order in which they are verified. The Fund shall be disbursed until it is exhausted or until three months elapse from the time the last refund bill credit is given, whichever comes first. If three months elapse and the Fund has a residual amount, after administrative costs are approved and assessed, that amount will be spread across all U S WEST retail customers of record as of the first of the month following the date the disbursement ends. The residual amount shall appear as a credit on retail customers' bills and shall be identified as "Residual refund as ordered by PUC."
- iv. USWC shall continue to pay interest on money in the Fund at the rate of 8.77 percent per year.
- v. USWC shall recover its approved administrative expenses from the money set aside for the Fund.

- 2. Exhibit A, Page 1 of 2, footnote 3 of the Stipulation is revised to read as follows:

Interexchange carriers who are access service customers of U S WEST will receive refunds based on amounts paid to U S WEST over the period from May 1, 1996, to the refund date. The amount due to a carrier will be calculated based upon a ratio of U S WEST's billed intrastate switched access revenues from the carrier to the total U S WEST intrastate switched access billed revenues during the period from May 1, 1996, to the refund date.

- 3. Exhibit A, Page 1 of 2, footnote 4 of the Stipulation is revised to read as follows:

Ninety-five percent of the local refund amount will be distributed to customers of record, as of the date of the refund, for the services listed in Exhibit A of this Stipulation, provided the customers have been customers for at least 60 days prior to the refund date. The accumulated balance will be divided by the total billing units on the

date identified pursuant to Paragraph 1 of this Stipulation. The exact number of customers will not be known until the Commission issues an order adopting this stipulation and establishes a date for the refund.

3. Order No. 96-107 is modified to change the refund interest rate from 11.2 percent to 8.77 percent, but the discussion and procedures of that order remain intact.
4. Order No. 96-183 is rescinded.
5. Order No. 96-286 is rescinded.
6. Order No. 97-171 is rescinded.



7. USWC shall file with the Commission a detailed breakdown of administrative costs for advertising and disbursing from the Fund. The final disbursement from the Fund shall occur after USWC's administrative costs are verified and paid from the Fund.

Made, entered, and effective \_\_\_\_\_.

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**Ron Eachus**  
Chairman

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**Roger Hamilton**  
Commissioner

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**Joan H. Smith**  
Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.