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BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UT 125/UT 80

In the Matter of the Application of US WEST)
COMMUNICATIONS, INC., for an Increase) ORDER
in Revenues.)

DISPOSITION: APPLICATION FOR RECONSIDERATION DENIED

On April 14, 2000, the Commission issued Order No. 00-190 (the Order) adopting, with modifications, a stipulation between Commission Staff and U S WEST Communications, Inc. (USWC). The stipulation resolved the revenue requirement issues that the parties had been litigating subsequent to issuance of Order No. 97-171. Among other things, Order No. 00-190 established procedures under which customers and former customers of USWC may receive refunds.

On June 9, 2000, Advanced TelCom Group, Inc., and Shared Communications Services, Inc., members of the Western States Competitive Telecommunications Coalition, applied for reconsideration of Order No. 00-190, pursuant to OAR 860-014-0095(3).¹ Commission Staff and USWC filed responses in opposition to the application on June 26, 2000.

Applicants' Position. Order No. 00-190 awards Centrex and residential customers a refund based on a ratio of 1.00 and business simple customers a refund based on a 2.40 ratio. Applicants assert that the refund process as set out in Order No. 00-190 would result in Centrex resellers receiving substantially smaller refunds than the amounts to which they should be entitled based on their overpayments to USWC. Accordingly, applicants request us to reconsider our decision and order USWC to issue refunds to Centrex resellers at the more appropriate 2.40 business simple weighting.

¹ That subsection lists the following criteria for granting reconsideration;
(a) new evidence;
(b) a change in law or policy essential to the decision;
(c) an error of law or fact essential to the decision; or
(d) good cause for further examination of a matter essential to the decision.

Applicants support their request by pointing out that during the overpayment period, Centrex resellers paid much higher rates than those paid by nonreseller Centrex customers. Centrex resellers paid a monthly per line surcharge of \$5.40, a charge not imposed on nonreseller Centrex customers. Further, applicants argue, on average they pay significantly more for station lines than do nonresellers. Finally, Centrex resellers must purchase more Network Access Registers (NARs) per station line to provide service than nonresellers. All these excess charges make the Centrex reseller rate closer to business simple rates than residential rates.

Order No. 00-190, at 17, found that the pricing of Centrex station lines is closer to prices paid by residential customers than by business customers. The Commission held that Centrex customers should therefore be treated on a par with residential customers for purposes of the refund.

Applicants concede that the typical Centrex customer should receive a refund at the 1.0 ratio, but contend that Order No. 00-190 ignores the law and facts surrounding the regulatory treatment of rates paid by Centrex resellers, particularly the Centrex surcharge. Applicants also maintain that the Order ignores previous Commission decisions, which consistently adjusted Centrex reseller rates to place them on a par with business simple rates. In UT 85, the Commission determined that resellers were arbitraging lower priced Centrex lines and diverting customers who would otherwise subscribe to ordinary service at higher rates. To address the arbitrage issue, the Commission ordered USWC to increase Centrex line rates for resellers so those rates would equal business service line rates.

The Commission also imposed the \$5.40 surcharge per resold Centrex line to increase the rates paid by resellers for Centrex lines, “thereby equalizing Centrex line rates with those applicable to business service.” UM 650, Order No. 94-1055. In its Order No. 00-190, however, the Commission declined to acknowledge that Centrex reseller rates have never been on a par with residential rates.

Applicants note that customers of Centrex resellers, after learning about USWC’s required refund in Order No. 00-190, have contacted Centrex resellers like applicants to inquire about refunds. The Commission notes in its Order that reseller CLECs are free to pass their refunds through to their customers, but Centrex resellers would receive an inadequate, inequitable refund based on a 1.00 weighting, according to applicants. Centrex resellers will have a difficult time, applicants assert, explaining this refund to their customers.

Applicants seek reconsideration of the above issues pursuant to OAR 860-014-0095(3)(c). Applicants assert that the Commission’s decision to limit refunds to Centrex resellers to the 1.00 residential ratio is based on an error of law and fact essential to the decision. Applicants maintain that the Commission could resolve the unfair result of the refund mechanism as it relates to Centrex resellers by requiring USWC to issue refunds to Centrex resellers at the business simple ratio of 2.40, which would not change

the refund request procedures or alter the outcome of Order No. 00-190 to the detriment of any party to the proceeding.

Response by Staff. Staff argues first that applicants failed to show an error of law or fact in the Order. Instead, according to Staff, applicants simply reiterate the assertions presented at the evidentiary hearing. The Commission has already considered these assertions and rejected them. Staff contends that mere repetition of the position applicants took below fails to satisfy their burden to show on reconsideration that the Order contains an essential error. For this reason, Staff maintains, the Commission should deny the application.

Staff further argues that the Order is lawful and its decision on refunds to Centrex resellers is fair and reasonable. Applicants, according to Staff, observe that the excess charges (the surcharge, the fact that they purchase more NARs per station line to provide service; the fact that they pay more for station lines than nonresellers) they pay puts their rates closer to business than to residential rates. Staff points out that the “refund per line” methodology taken in the Order is based on line rates paid to USWC, not on total paid or revenue per line, as applicants urge. The UT 125 record shows that Centrex resellers paid line rates more comparable to residential than to business rates. Accordingly, Staff contends, Centrex users and Centrex resellers should receive the same refund as residential customers.

Finally, Staff takes issue with applicants’ contention that their proposed change would not alter the outcome of the Order to the detriment of any party. Staff points out that the total refund amount is fixed by formula and does not depend on how the refund is distributed among customer groups. If more money flows to the resellers, the rest of USWC customers receive less money. Staff estimates that the dollar change proposed by applicants would amount to about \$7.2 million. Thus, Staff maintains, groups receiving less money under applicants’ proposal would certainly view changing the Order as applicants urge as a detriment to them.

USWC’s Response. USWC, like Staff, argues that the application for reconsideration is actually an attempt to reargue the position applicants put forward in the evidentiary phase of the case. Applicants, according to USWC, put forth no new law or evidence to support the restatement of their earlier comments. Further, USWC asserts that applicants fail to identify the mistake of law or fact on which their application is based. Applicants also fail to identify good cause to reconsider the order. Therefore, USWC argues, their request should be denied.

USWC also contends that the application should be denied because it is based on a demonstrably false premise. Applicants argue that they are entitled to a refund equal to business simple customers because Centrex resellers have been treated on a par with business rates for regulatory purposes in the past. USWC argues that the Commission’s decision was not based on how Centrex resellers and their rates were treated for regulatory purposes but on the fact that all Centrex customers, including

resellers, pay rates closer to the rates residential customers pay than to the rates business customers pay. *See* Order No. 00-190 at 17.

USWC defends the Commission's conclusion about Centrex rates, pointing out that station line rates for Centrex customers range from \$10.03 to \$14.00 to \$16.50, as compared to the basic residential rate of \$12.80 per month and the basic business rate of \$30.87. USWC points out that even with the \$5.40 surcharge, Centrex rates are closer to residential than to business rates. Moreover, USWC asserts, Centrex lines have a number of standard features per line, which adds value to the standard line. Centrex customers receive several standard features on a basic Centrex line for which typical business customers must pay additional charges. Thus the Commission's decision to treat Centrex customers (including resellers) on a par with residential customers for purposes of the refund is palpably correct, according to USWC.

USWC's last point is that applicants' requested change would, indeed, be to the detriment of other parties, because the refund is a zero sum game. More for one party necessarily means less for others.

Disposition. While Staff and USWC contend that applicants have not properly alleged an error of fact or law, we construe applicant's request to allege such an error in our treatment of Centrex resellers in the Order. Applicants assert, in essence, that we erred in conflating all Centrex customers instead of treating Centrex resellers as a group apart.

We do not agree with applicants' allegation that we erred in our treatment of the refund to Centrex resellers, however. As Staff points out, the refund is based not on revenue per line or total paid per line but on rate per line. Centrex rates per line are incontestably closer to residential than to business rates. As USWC notes, our refund methodology decision was not based on the fact that we have approximated Centrex resellers' costs to business simple costs for regulatory purposes. Moreover, USWC's figures, above, show that even with the surcharge, Centrex resellers pay rates closer to residential than business simple customers.

Therefore, we conclude that applicants' request for reconsideration should be denied.

ORDER

IT IS ORDERED that the application by Advanced TelCom Group, Inc., and Shared Communications Services, Inc., for reconsideration of Order No. 00-190 is denied.

Made, entered, and effective _____.

Ron Eachus
Chairman

Roger Hamilton
Commissioner

Joan H. Smith
Commissioner

A party may appeal this order to a court pursuant to applicable law.