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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 960

In the Matter of the Request by U S WEST)	
Communications, Inc., to Withhold from)	
Public Disclosure Certain Service Quality)	ORDER
Information Filed Pursuant to Oregon)	
Administrative Rule 860-023-0055.)	

I. Background

Oregon Administrative Rule 860-023-0055 promulgated by the Public Utility Commission of Oregon (Commission) prescribes minimum service quality standards that must be met by all telecommunications utilities providing local exchange service in the State of Oregon. Section 11 of the rule requires utilities to report to the Commission when any of the standards are not met on a monthly basis. Section 11(a) further provides that the Commission may require, after its own investigation, that a telecommunications utility provide monthly reports on any or all items covered by the rule.

U S WEST Communications, Inc. (USWC) is a telecommunications utility providing local exchange service in the state of Oregon. In recent years, USWC has experienced significant service quality problems throughout its Oregon service territory. The problems have been numerous and widespread and have necessitated repeated efforts by the Commission to rectify the deficiencies.

USWC's service quality problems first came to the attention of the Commission Staff (Staff) in December 1995, when it was discovered that 24 of USWC's wire centers¹ were in violation of the trouble reports service standard. In January 1996, Staff discovered that USWC was in violation of a second technical service standard relating to transmission quality. Both of these service standards were agreed to by USWC as part of its Alternative Form of Regulation (AFOR), an innovative pricing flexibility plan

¹ A telecommunications utility "wire center" is a facility where local telephone subscribers' access lines converge and are connected to a switching device which provides access to the public switched network. The wire center is also where customers can be interconnected with long distance carriers. A wire center and a switching center are quite similar, except that a wire center can have more than one switch in it. USWC has 77 wire centers in Oregon.

designed to accommodate the advent of competition in local telecommunications markets.²

Because of USWC's inability to improve its service quality in a timely and comprehensive manner, the Commission was forced to terminate the AFOR in Order No. 96-107, entered April 24, 1996. In addition, the Commission imposed monthly service quality reporting requirements on USWC and implemented specific remedies to assist customers experiencing problems with USWC's service.³ Since that time, the Commission has continued to monitor USWC's efforts to improve its service quality.

In late 1998, the service quality provided to USWC customers served by analog switching equipment deteriorated substantially. During the first quarter of 1999, the Commission began to receive an unusual number of complaints from USWC customers indicating that they could not make or receive calls throughout the day. Upon learning of the potentially life-threatening problems experienced by personnel at Mercy Medical Center in Roseburg, Oregon, the Commission initiated docket UM 928 at its March 2, 1999, regular public meeting. *See* PUC Order No. 99-187 (March 2, 1999).⁴

Although the Commission received service quality complaints from customers throughout USWC's Oregon service territory, the problems were particularly acute in the areas served by the Roseburg and Grants Pass wire centers. The Commission received hundreds of complaints from customers in these areas and convened special public meetings to inquire into the nature and extent of the problems.⁵ Because the volume of complaints was so great, the Commission and USWC agreed upon an expedited process to provide billing credits in a timely manner to affected customers. As part of the UM 928 investigation, the Commission also requested USWC to provide direct written assurances that it would replace its existing analog switches with more modern digital facilities in accordance with a definite replacement schedule. Although USWC initially objected making such a commitment, the company subsequently agreed to install digital capacity in all of its Oregon wire centers by the end of calendar year 2001, barring unforeseeable events beyond the company's control. *See* PUC Order No. 99-401, *supra*.

² Under the AFOR, USWC was given pricing flexibility for non-essential services and the freedom to earn within a broad rate of return range. The AFOR plan was contingent upon USWC meeting certain technical standards incorporated in a stipulation between USWC and Commission Staff. *See* PUC Order No. 91-1598, entered November 25, 1991.

³ In addition to USWC's failure to comply with the technical service standards agreed to as part of the AFOR, Staff also discovered that USWC customers were experiencing serious "held order" problems when attempting to have telephone service connected or restored. PUC Order No. 96-107 approved billing credits and established a cellular telephone loaner program to address the "held order" problems.

⁴ *In the Matter of the Investigation of the Telecommunications Services provided by U S WEST Communications, Inc., to Mercy Medical Center, Roseburg, Oregon, and the Status of its [sic] IAESS Switches Operating in Oregon*, PUC Docket No. UM 928.

⁵ Special public meetings to address USWC service quality problems were also held in LaGrande, Newport, and Oakridge.

In March 1999, USWC began designating its monthly service quality reports “confidential.” Staff disagreed with the new designation and informed USWC that service quality reports filed by USWC pursuant to OAR 860-023-0055 are public records that may be disclosed by the Commission and its staff. Among other things, Staff notified USWC that:

PUC receives frequent requests for service quality data from utility customers and the media. Under the Oregon Public Records Law—ORS 192.410 *et seq.*—the Commission is obligated to release this information to the public unless it is determined to be exempt from disclosure. At this point, the Commission and staff are not convinced that USWC’s service quality reports are exempt from disclosure.

Over the course of the next several months, Staff asked USWC to provide the factual and legal bases supporting its contention that service quality data is confidential. USWC responded that all of its service quality reports are confidential information and therefore protected from disclosure. The company indicated that, for the time being, it is willing to disclose service quality data aggregated on a statewide basis, but under no circumstances will USWC permit disclosure of wire center-specific data.⁶

II. Service Quality Reports Required by OAR 860-023-0055

The monthly service quality reports filed by USWC pursuant to OAR 860-023-0055 contain the following service quality measurements:

a. **Transmission Quality:** measured, for each wire center, in terms of the percentage of interoffice and access trunk groups that experience AML (actual measured loss) that deviates from EML (expected measured loss) by more than .7dB (decibel), and by more than 1.7dB. *See* OAR 860-023-0055(9)(b).

b. **Network Blockages:** measured, for each wire center, in terms of an index based on the percentage “completion of properly dialed calls during the average busy season without encountering blockages or equipment irregularities.” *See* OAR 860-023-0055(9)(a).

c. **Dial Tone Speed:** measured, for each wire center, in terms of the percentage of originating average busy hour call attempts that receive dial tone within three seconds. *See* OAR 860-023-0055(6)

⁶ The correspondence between Staff and USWC began in August 1999 and continued through November 1999. That correspondence is attached to this Order as Appendix A.

d. **Wire Center Trouble Reports**: measured, for each wire center, in terms of the number of reports received from customers concerning impaired or out-of-service conditions on the utility side of the network interface per 100 access lines per wire center. *See* OAR 860-023-0055(5).

e. **Access to Utility's Business Offices**: measured, on a state-wide basis, in terms of the percentage of each month's calls to the utility's business office centers that are answered within 20 seconds. *See* OAR 860-023-0055(3)(a).

f. **Access to Utility's Repair Service Centers**: measured, on a state-wide basis, in terms of the percentage of each month's calls to the utility's repair service centers that are answered within 20 seconds. *See* OAR 860-023-0055(3)(b).

g. **Held Orders**: measured, on a state-wide basis, in terms of the total number of orders for access line service that have not been filled by the utility within the time period promised to the customer. *See* OAR 860-023-0055(2).

h. **Repair Service Completion Times**: measured, on a statewide basis, in terms of the percentage of reported service problems that are repaired within 48 hours. *See* OAR 860-023-0055(4).

III. The Oregon Public Records Law (ORS 192.410 *et seq.*)

As USWC acknowledges, the Oregon Public Records Law provides that “[e]very person has a right to inspect any public record of a public body in this state, except as otherwise expressly provided by ORS 192.501 to 192.505.” ORS 192.420. This law reflects the state’s policy that the public is entitled to know how public business is conducted and how public bodies are administering particular programs. *Guard Publishing Co. v. Lane County School Dist.*, 96 Or App 463, 469, 774 P2d 499 (1989), *rev’d on other grounds*, 310 Or 32, 791 P2d 854 (1990).

The Oregon Supreme Court noted in *Guard Publishing Co. v. Lane County School Dist.*: “Under the statutory scheme, disclosure is the rule. Exemptions from disclosure are to be narrowly construed.” *Id.*, 310 Or at 37. “An individual claiming an exemption from disclosure must *initially show* a public body that the exemption is legally and factually justified.” *Id.* (emphasis in original).

If the Commission determines that information qualifies for exemption from disclosure requirements, it is not necessarily prohibited from disclosing the information. Conditional exemptions authorize, but do not require, the Commission to withhold disclosure of the information. *Id.*, 310 Or at 37-38. The Commission may disclose the information if it finds that the public interest in disclosure outweighs the interest in preserving confidentiality. *See id.*, *Jordan v. MVD*, 308 Or 433, 440, 781 P2d 1203 (1989).

IV. USWC Legal Claims. In support of its position that service quality reports should be withheld from public disclosure, USWC argues that the reports:

- (a) are “trade secrets” exempt from public disclosure pursuant to ORS 192.501(2);
- (b) constitute “audit reports” required of a telecommunications carrier, exempt from public disclosure pursuant to ORS 192.501(19), and;
- (c) include information “of a type that could potentially be used to the competitive disadvantage of a local exchange telecommunications utility,” and are exempt from public disclosure pursuant to ORS 759.060 and OAR 860-032-0070(2).

a. Trade Secrets. USWC contends that the service quality data are exempt from disclosure under ORS 192.501(2), which conditionally exempts “trade secrets.”

"Trade secrets," as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within an organization and which is used in a business it conducts, having actual or potential commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it[.] *Id.*

The Commission is not persuaded that service quality data filed pursuant to OAR 860-023-0055 constitutes “trade secrets” under ORS 192.501(2). The data is not a proprietary product or process. Nor does the data specifically measure any proprietary product, process or plan of USWC or any other company. As USWC acknowledges, the data consists of “service quality results for various measures mandated by the Commission.” Most of these measures or standards established by the Commission are defined in terms of the quality of telephone service received by subscribers.

USWC, as the party requesting that the information not be disclosed, has the burden of showing the Commission that the information constitutes a trade secret. *Guard Publishing Co. v. Lane County School Dist.*, *supra*, 310 Or at 37. *See also Waelde v. Merck, Sharp & Dohme*, 94 FRD 27, 28 (E.D. Mich. 1981), *cited in Citizens’ Utility Board of Oregon v. PUC*, 128 Or App 650, 658-659, 877 P2d 116, *rev den*, 320 Or 272 (1994). “Moreover, vague and conclusory allegations of confidentiality and competitive harm are insufficient. The movant must make ‘a particularized showing that the information sought is confidential’ and come forth with ‘specific examples’ of competitive harm.” *Waelde, supra*, 94 FRD at 28.

USWC has not demonstrated that the service quality data is a trade secret. The company baldly asserts that the information has not been publicly disclosed, that it spent substantial resources to compile the information, and that the data cannot be duplicated by a competitor. It did not, however, produce any evidence or affidavits to substantiate these claims. As the Court noted in *Citizens' Utility Bd.*, *supra*, a party seeking confidentiality must make a "particularized showing" that the data is entitled to protection. USWC has not made such a showing in this instance.

The Commission notes that USWC's monthly service quality reports were not designated as confidential prior to our March 1999 decision to commence a formal investigation of USWC's switches.⁷ USWC did not explain why this information should suddenly be treated as trade secrets or confidential information. The Commission does not comprehend how this service quality information that has been provided for years by USWC without restriction can be elevated to "trade secret" status virtually overnight.

Contrary to USWC's assertion, the Commission does not agree that the information included in service quality reports has commercial value to potential competitors of USWC. We discuss this issue at length in Section V. of this order. Furthermore, USWC's suggestion that the service quality reports have intrinsic value to the company is also dubious in light of the chronic service quality problems its customers have experienced. The company's failure to make the capital investments necessary to avoid serious service quality problems discloses that USWC has paid little or no heed to the information included in its service quality reports.

Indeed, the Commission believes that it is incorrect, as well as unreasonable, to interpret the term "trade secret" to prevent disclosure of such subscriber-oriented service quality data to USWC's customers, potential customers, or the public generally. *See* ORS 646.461(4)(b) ("Trade secret" means information * * * that * * * [i]s the subject of efforts that are reasonable under the circumstances to maintain its secrecy."). For example, analogous product and service quality data concerning companies in other industries is readily available to the public. The United States National Highway Traffic Safety Administration routinely discloses reports, test results, and compliance/noncompliance data regarding numerous makes and models of automobiles. *See* <http://www.nhtsa.dot.gov/cars/problems>. Similarly, the United States Department of Transportation routinely discloses airlines' on-time arrival and departure performance data by carrier and airport. *See* <http://www.dot.gov/airconsumer>. *See also* <http://www.ftc.gov> for the Federal Trade Commission's reports on the tar, nicotine, and carbon monoxide content of the smoke of various brands of cigarettes, and <http://www.fda.gov/cdrh/maude.html> for reports of adverse events involving medical devices.

⁷ Appendix B is the monthly service quality reports filed with the Commission by USWC for February 1999. The reports are not marked confidential. The Commission notes that the October 5, 1999 letter from Mr. Nyegaard to Mr. Butler incorrectly states that USWC began marking monthly service quality reports confidential "several years ago." The sentence should state that USWC began marking its monthly service quality reports confidential "several months ago." *See* Appendix A, page 7 of 21.

Even assuming for purposes of this discussion that the service quality data contained in USWC's monthly reports are "trade secrets," the Commission finds that the public interest in access to this information clearly outweighs the company's asserted confidentiality interest in the data. See discussion in Sections V. and VI. below.

b. Telecommunications Utility Audit Reports. USWC asserts that its service quality data is exempt from disclosure under ORS 192.501(19)(a), which conditionally exempts:

Audits or audit reports of a telecommunications utility. As used in this paragraph, "audit or audit report of a telecommunications utility" means any external or internal audit or audit report pertaining to a telecommunications utility, as defined in ORS 759.005, or pertaining to a corporation having an affiliated interest, as defined in ORS 759.010, with a telecommunications utility that is intended to make the operations of the entity more efficient, accurate or compliant with applicable rules, procedures or standards, that may include self-criticism and that has been filed by the telecommunications utility or affiliate under compulsion of state law. "Audit or audit report of a telecommunications utility" does not mean an audit of a cost study that would be discoverable in a contested case proceeding and that is not subject to a protective order.

Assuming for purposes of this discussion that USWC's monthly service quality reports constitute "audit reports" under ORS 192.501(19)(a), the Commission concludes that the public interest in access to this information clearly outweighs the company's asserted confidentiality interest. See discussion in Sections V. and VI. below.

c. ORS 759.060 and OAR 860-032-0070(2). USWC asserts that the wire-center-specific service quality data is exempt from disclosure under the Commission's rule 860-032-0070(2).

ORS 759.060 provides, in relevant part:

(1) The Public Utility Commission, by rule, shall specify information submitted to the commission by local exchange telecommunications utilities or cooperatives that is exempt from disclosure under ORS 192.410 to 192.505 as provided in this section. In adopting rules, the commission shall consider, among other matters:

(a) Whether the information is of a type that could potentially be used to the competitive disadvantage of a local exchange telecommunications utility or cooperative.

(b) Whether the information concerns matters of a nature personal to an employee or stockholder of a local exchange telecommunications utility or an employee or member of a cooperative.

(c) Whether the information is otherwise publicly available.

(2) Information specified under subsection (1) of this section is exempt from disclosure unless the public interest requires disclosure in the particular instance.

Pursuant to this statute, the Commission adopted OAR 860-032-0070. USWC relies upon section (2) of this rule, which provides:

(2) The Commission may determine, on a case-by-case basis, whether information of a type not listed in section (1) of this rule, submitted or filed with the Commission by a local exchange telecommunications utility or cooperative, in any form including magnetic, electronic, and paper media, is exempt from disclosure if such information could potentially be used to the competitive disadvantage of the telecommunications utility or cooperative.

USWC argues that “wire-center-specific service quality data can be used for competitive purposes” and, therefore, “this type of data is exempt from disclosure under the Commission’s own rules.”

The Commission disagrees. OAR 860-032-0070(2) contains permissive language under which the Commission “may” exempt information from disclosure if the information could potentially be used for competitive purposes. The underlying statute, ORS 759.060(2), authorizes the Commission to disclose the information if “the public interest requires disclosure in the particular instance.” As discussed in Sections V. and VI. below, the Commission concludes that the public interest in disclosure of USWC’s service quality performance data outweighs the company’s claimed confidentiality interest in the data.

V. USWC’s Allegations of Competitive Harm

As noted above, USWC’s monthly reports indicate, by wire center, the utility’s service quality results for various measures mandated by OAR 860-023-0055. USWC claims that its service quality information is competitively valuable and that releasing such information would harm the public. It asserts that:

[G]eographic information by individual wire center conveys to competitors specific geographic areas within the state where U S WEST is most vulnerable, which would substantially harm the competitive position of U S WEST.

* * * * *

Wire center-specific information can be easily analyzed and used by competitors to develop patterns in US WEST's business management and planning processes, including the tracking and predicting of areas within which US WEST may be preparing to target investment and marketing activities. This type of information can also be used to identify timing and geographic locations of demand growth around the state. Moreover, seasonal information specific to geographic areas shows the season of the year US WEST would be most vulnerable to competitor's marketing efforts. Finally, the most compelling fact demonstrating that this type of information is commercially valuable is that no competitors of US WEST appear to be voluntarily making this type of information available publicly, to the press or otherwise.

* * * * *

In fact, releasing wire center-specific service quality data may be against the public interest. Today's business climate requires access to adequate telecommunications services. Such access often guides investment decisions by businesses. Quite possibly, a business will choose not to invest in a specific community if management perceives telecommunications services to be inadequate. Such a misinformed choice would be detrimental to the local economy. US WEST submits that the proper use of service quality data should satisfy the public that US WEST's overall quality in Oregon is comparable to that in other states (which it is) and to allow US WEST and the Commission to identify areas which need improvement, without undue hardship to the local economy or US WEST's competitive interests.

Where information is conditionally exempted from disclosure under ORS 192.501 or 759.060, the Commission must weigh the interests in maintaining confidentiality against the public interest in disclosing the information. Upon review, the Commission is not persuaded that the disclosure of USWC's service quality reports will disadvantage the company or make it more vulnerable to competition from other telecommunications carriers.

(a) To begin with, the service quality data provided by USWC in its monthly reports is very general in nature and does not provide the type of information that would enable competitors to make informed decisions about whether to provide telecommunications service in a given area. Service quality reports do not disclose, for example, (1) the various services offered to customers served by a particular wire center; (2) the number of customers subscribing those services, or; (3) problems USWC might be

experiencing in delivering those services.⁸ Without such information, it would be extremely difficult for competitors to “ascertain patterns in USWC’s business management and planning processes” or determine the areas where USWC “may be preparing to target investment and marketing activities,” as USWC claims.

Furthermore, entry decisions by competing telecommunications carriers will be driven by factors such as total investment cost, population density, the number and type of businesses within the area, population growth rates, and other economic considerations. The fact that USWC is providing substandard customer service in an area may make it easier for competitors to market their services once they have entered a local exchange market, but it is unlikely to be a major consideration deciding whether to enter that market in the first place.

(b) Realistically, there is no chance that disclosure of USWC’s service quality data will enable competitors to enter USWC’s service territory and divert substantial number of customers away from USWC. If a competitor wants to resell USWC’s existing local exchange service, that service will be subject to the same quality problems, making it highly unlikely that customers will be satisfied with the service quality provided by the reseller. It is even less likely that facilities-based competitors will be able to capitalize on USWC’s service quality problems to capture significant numbers of USWC customers. Facilities-based competitors must incur substantial infrastructure investments in switching, transport, and other facilities before they can provide telecommunications service in new areas. USWC, on the other hand, is the incumbent provider and already has its telecommunications network in place, giving it a huge advantage over new entrants. Even if USWC were vulnerable to competition in its Oregon service territories, it could easily remedy all of its existing service quality problems in far less time than it would take a facilities-based competitor to build a new telecommunications network from scratch.

(c) Disclosure of the USWC’s service quality data will not make the company more vulnerable to competition. USWC’s vulnerability is greatest in dense urban areas, such as the Portland metropolitan region. Since a number of competitive providers already offer telecommunications services in Portland, disclosure of service quality data is unlikely to have any effect on competition in that region. USWC is also unlikely to face any significant competition in its rural service territories—but for an entirely different reason. USWC’s problems delivering adequate telecommunications service to rural

⁸ The only information included in the service quality reports that might have any value to potential competitors is the number of access lines served by a wire center. That information, however, is already published by USWC’s on its Internet web site. Furthermore, USWC’s web site reveals information that cannot be gleaned from the service quality reports, including the type of services available at its wire center—e.g., ISDN, CLASS Services, and SS7 Capability. This, of course, is contrary to USWC’s claim that it “does not disclose wire-center-specific service quality data outside the business except as required by law.” See, e.g., <http://www.uswest.com/cgi-bin/iconn/iconn.pl?function=ccli_detail&ccli=RSBGOR57CG0> (last visited December 7, 1999).

Oregon customers are well documented. USWC customers in Roseburg and Grants Pass filed hundreds of complaints alleging poor service because of inadequate switching and interoffice transport facilities. *See* PUC Order No. 99-187, *supra*. Similar problems have been reported by USWC customers in Oakridge, Florence, Springfield, Corvallis, Sutherlin, Medford, and other communities. Despite the extensive publicity surrounding USWC's service deficiencies, no competing local exchange carriers have established a significant market presence in any of these communities.

The fact of the matter is that USWC's extensive service quality problems have been a matter of public record for quite some time, yet the company continues to maintain a virtual monopoly for local exchange service throughout its Oregon service territory. If competing carriers were going to target Oregon local exchange markets based upon the knowledge that USWC is providing poor service, they would have done so long before now.

(d) In evaluating USWC's claim that disclosure of service quality reports will enable other carriers to obtain a competitive advantage, we emphasize that the monthly wire center reports in dispute were not designated by USWC as confidential prior to our decision in March 1999, to commence a formal investigation of USWC's analog switches. Not only has USWC failed to explain how this information suddenly became confidential, it has failed to explain why competitors have not previously taken advantage of that data to enter the numerous USWC service areas in Oregon where service is substandard. Not surprisingly, these circumstances cast doubt on USWC's newfound claim of confidentiality and lead the Commission to question whether the company's real motive is to avoid embarrassment that might be associated with release of data showing its substandard service in certain areas rather than to protect any legitimate proprietary interest.

VI. Public Interest Considerations. The Commission believes strongly that USWC's customers and the public have a substantial interest in having access to all of the service quality performance data reported by USWC.

(a) The service quality reports at issue indicate whether USWC is in compliance with the minimum telecommunications standards mandated by OAR 860-023-0055. These standards apply to all telecommunications utilities. It should go without saying that all telecommunications customers have a right to know if they are receiving the services they are paying for. If wire centers operated by local exchange carriers, such as USWC, are not being operated in accordance with prescribed minimum service standards, customers should have the opportunity to discover that fact and assert their legal rights by filing a complaint pursuant to ORS 756.500 or asking for a Commission investigation pursuant to ORS 756.515. *See Guard Publishing Co. v. Lane County School Dist.*, *supra*, 96 Or App at 469 (the public is entitled to know how public business is conducted and how public bodies are administering particular programs); *Jensen v. Schiffman*, 24 Or App 11, 17, 544 P2d 1048 (1976). If service quality information is kept secret from customers, they have no way of knowing the source of their service problems, and they are effectively denied the avenues of redress prescribed by law. *See, e.g.*,

ORS 756.040, 756.500, 756.521, 756.525, 759.015, 759.020(6), 759.035, 759.175, 759.260(1)(b), 759.900.

(b) USWC asserts that it “has agreed to accommodate the public interest by releasing state-wide aggregated service quality data. The public interest requires no more.” The company further maintains that it may actually harm the public interest by providing customers with access to service quality data because businesses will not invest “in a specific community if management perceives telecommunications services to be inadequate.”

The Commission disagrees strongly with these assertions. Apparently, USWC believes that business customers would be better off if they are left in the dark about the service quality they can expect to receive from their local telecommunications provider. Nothing could be more wrong. All customers and potential customers are entitled to know the quality of local exchange service provided in their community as well as in other communities served by their telecommunications utility.⁹

Telephone customers are entitled to know if the service quality problems they are experiencing are the result of problems with USWC’s facilities so that the customers can avoid unnecessary expenses. Prior to the Commission’s decision to initiate docket UM 928 and the attendant publicity associated with that investigation, many customers were unaware that the root cause of their telecommunications problems was the inability of USWC’s analog switches to handle increased call volumes. During the course of our investigation, many customers indicated that they thought the problem was with their own telephone equipment and facilities. If telephone customers do not have access to information regarding the service supplied by their telecommunications utility’s local wire center, they will incur unnecessary costs to inspect and replace telephone equipment and facilities that are not defective. For customers with sophisticated telecommunications equipment, these costs could easily total thousands of dollars.

(c) Similarly, customers planning to modify or expand their telecommunications facilities to accommodate growth or other operational changes are also entitled to know if the wire center serving their area meets the quality standards established by the Commission. This is particularly true in the case of businesses, hospitals, and governmental institutions that rely heavily on telecommunications services and make substantial investments in telecommunications facilities. Customers should not be placed in the position of installing expensive equipment only to discover too late that the local USWC wire center cannot accommodate their demand for service.

Likewise, businesses that are considering where to locate or relocate their plants and offices should have access to information about utilities’ service quality in various areas of the community as well as in other parts of the state. Thus, the Commission and its staff should be permitted to disclose wire center-specific service quality data,

⁹ USWC’s argument also implies that business customers have only one choice of telecommunications provider—USWC or nothing. Oregon and federal law contemplate that USWC will not remain the monopoly provider of local exchange telecommunications service.

particularly when the data is requested by US WEST's telephone customers, potential customers, interested persons or the media. *See Guard Publishing Co. v. Lane County School Dist.*, *supra*, 96 Or App at 469; *Jensen v. Schiffman*, *supra*, 24 Or App at 17.

(d) During the our investigation of the USWC wire centers serving the Roseburg and Grants Pass areas, many customers expressed serious concerns about their ability to adequately respond in the case of medical emergencies. *See* PUC Order No. 99-187, *supra*. Customers and their family members may have health conditions requiring immediate access to medical personnel and emergency transport services. For these persons, it is essential to know whether the telecommunications facilities provided by their local exchange carrier are adequate. If the carrier's facilities are deficient, customers must make alternative arrangements to ensure that they can communicate with emergency service providers until those facilities can be improved.

Among the hundreds of complaints received concerning USWC's service quality, the Commission also received complaints from Mercy Medical Center in Roseburg and the Oregon State Police in Springfield. It is crucial for institutions such as these to have access to high quality telecommunications networks in order to serve and protect the public. It should be self evident that such institutions also have an absolute need to know if problems exist at USWC's wire centers that will impair the utility's ability to provide adequate telecommunications service, even if those problems are temporary in nature. Docket UM 928 was prompted in large part because of serious problems encountered by Mercy Medical Center personnel making and receiving telephone calls and USWC's inability to properly deal with those problems. *See* PUC Order No. 99-187, *supra*.

USWC cannot deny that it has experienced serious problems with the ability of its wire centers to accommodate the calling needs of its customers. By attempting to withhold wire center-specific service quality performance data from public scrutiny, the company threatens the safety, health, and welfare of the public. If individuals, businesses, emergency service providers, and governmental agencies are denied access to information, they will be unable to anticipate and respond to problems with their telecommunications service. The Commission is convinced that the information must be available to allow customers to take whatever measures they can to protect themselves from deficiencies in USWC's service.¹⁰

(e) Even if USWC were correct that disclosing service quality information would result in increased competition, such a result is consistent with the Oregon statutory scheme and the federal Telecommunications Act of 1996, both of which are specifically designed to encourage the rapid development of local exchange competition. *See* ORS 759.015, 759.050; 47 U.S.C. §§ 251, 253(a). Viewed in this context, USWC's attempt to prevent disclosure is anticompetitive because it perpetuates USWC's position as the

¹⁰Indeed, in UM 928, USWC's written pledge to replace its outdated analog switches states that the utility "will undertake a commitment to promptly inform its customers and the Commission of any unforeseeable or uncontrollable events that occur, if any, which would threaten the timing of the switch replacements." PUC Order No. 99-401, entered June 28, 1999.

monopoly supplier of local exchange telecommunications services. USWC's stance has the practical effect of relegating its customers to the level of service quality that the company deems sufficient, rather than forcing it to respond to competitive pressure to improve its service quality.

(f) USWC's position is also inconsistent with newly enacted Senate Bill 622 (1999). Under Sections 24 and 25 of the law,¹¹ a telecommunications carrier may elect price-cap regulation. Section 30 requires that an electing carrier meet the same kinds of service quality standards set forth in USWC's monthly reports, including trouble rate reports and network blockage reports. Section 30(3) requires the carrier to "report to the commission quarterly the carrier's performance relative to each of the minimum service quality standards." Section 30(4) authorizes the Commission to impose civil monetary penalties upon a carrier for violations of these service quality standards. If, as USWC contends, service quality data must be kept confidential, then the Commission's complaints and orders for penalties under section 30 could not disclose the extent of a carrier's noncompliance with a service quality standard. There is no provision in section 30 that requires violations of the Commission's service quality rules to be kept secret.

VII. Conclusion

Based on the foregoing, the Commission concludes that the public interest in access to USWC's service quality performance data clearly outweighs the company's asserted confidentiality interest in the data. The Commission therefore declines USWC's request to preserve the confidentiality of the monthly service quality performance data submitted in compliance with OAR 860-023-0055. The Commission will not withhold public disclosure of this information more than seven days from the service date of this order.

¹¹ 1999 Oregon Laws, chapter 1093. On November 30, 1999, USWC notified the Commission of its election to be subject to the provisions of sections 24 and 25 of this Act effective December 30, 1999.

ORDER

IT IS THEREFORE ORDERED that the monthly service quality reports filed with the Commission by U S WEST Communications, Inc., pursuant to OAR 860-023-0055 are not entitled to confidentiality. The Commission will not withhold public disclosure of this information more than seven days from the service date of this order.

Made, entered, and effective _____.

Ron Eachus
Chairman

Roger Hamilton
Commissioner

Joan H. Smith
Commissioner

A party may request reconsideration of this order pursuant to ORS 756.561. A request for 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 and must be served as provided in OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.