

This is an electronic copy.

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UX 21

In the Matter of the Petition of U S WEST)
Communications, Inc., to Exempt from)
Regulation U S WEST's DS3 Service.)

ORDER

DISPOSITION: PETITION GRANTED

On December 3, 1998, U S WEST Communications, Inc., (USWC) submitted a petition to exempt from regulation its DS3 Service pursuant to ORS 759.030(3) and (4) and OAR 860-032-0025. Integra Telecom, AT&T Communications of the Pacific Northwest, and AT&T Local Services on behalf of TCG Oregon were granted intervenor status.

Following prehearing conferences and extensive discovery procedures, the Staff of the Public Utility Commission surveyed telecommunications service providers regarding some of the issues in this case. Following completion of that survey, the parties negotiated further and established a schedule for additional steps. On November 22, 1999, USWC filed testimony supporting its petition. On December 10, 1999, Staff filed a letter with the Administrative Law Judge stating that Staff and intervenors do not oppose the petition.

The Commission has reviewed the petition, the testimony submitted by USWC, and the file in this case and makes the following:

FINDINGS OF FACT

DS3 Service

DS3 service is a non-switched, point to point circuit that is dedicated to a specific customer for use on a 24 hour, 7 day a week basis. DS3 operates at 44.736 Megabits per second and can be multiplexed into a variety of lower speed channels for transporting voice or data. Customers of DS3 service are typically large and sophisticated users with significant volumes of traffic to transport between locations, such as large businesses, government agencies, and interexchange carriers. Most of these customers use DS3s to aggregate lower bandwidth circuits to increase economic efficiency in transporting these circuits between locations.

Applicable Law:

ORS 759.030 allows the Commission to exempt a telecommunications service from regulation if price and service competition exist. The statute requires the Commission to consider the following factor before making its decision:

- (a) The extent to which services are available from alternative providers in the relevant market;
- (b) The extent to which the services of alternative providers are functionally equivalent or substitutable at comparable rates, terms, and conditions;
- (c) Existing economic or regulatory barriers to entry;
- (d) Any other factors deemed relevant by the Commission.

OAR 860-032-0025(1) and (3) provide that:

- (1) Upon petition by a public utility and, except as provided in section (7) of this rule, upon notice and hearing, the Commission shall exempt in whole or in part from regulation a service, if the Commission finds the rate the public utility proposes for the service covers its full long range incremental costs:

- (a) Price and service competition exists; or
- (b) The service is subject to competition.

* * * * *

- (3) Prior to making a finding under sections (1) or (2) of this rule, the Commission shall consider:

- (a) The extent to which services are available from alternative providers in the relevant market;
- (b) The extent to which the services of alternative providers are functionally equivalent or substitutable at comparable rates, terms, and conditions;
- (c) Existing economic or regulatory barriers to entry; and
- (d) Any other factors deemed relevant by the Commission.

OAR 860-027-0052 provides a requirement for the allocation of costs between regulated and nonregulated utility operations. The public utility company must convince the Commission that its proposed treatment of interoperational transactions is proper.

DISCUSSION

Long Run Incremental Costs (LRIC).

The record reflects that a cost study setting forth the long run incremental costs of USWC's DS3 service is already on file with the Commission. This information indicates that USWC plans to price its DS3 service above the LRIC in providing the service. USWC's petition indicates that when the petition is granted, it will allocate costs between regulated and nonregulated utility operations appropriately and in compliance with OAR 860-027-0052, and will file such revisions to its previously approved cost allocation manual as may be required by OAR 860-027-0052.

Price and Service Competition.

The Commission must consider the extent to which services are available from alternative providers in the relevant market and the extent to which the services of alternative providers are functionally equivalent or substitutable at the comparable rates, terms, and conditions for the service in question. In this case, PUC Staff conducted a survey of the relevant market. This method was used because many providers refused to divulge information on their services in response to USWC's request. A compromise agreement was reached whereby Staff would compile responses to questionnaires served by USWC without divulging information considered by these providers to be confidential.

The survey reveals that seven companies other than USWC offer DS3 service. The survey also establishes that the services provided by the other companies are functionally equivalent to USWC's DS3 service. The survey also demonstrates that these alternative services are available on widely variable terms and conditions.

The Commission concludes that service and price competition exists for the service in question.

The Commission also concludes that the number of competitors established by the survey indicates that there are no significant economic or regulatory barriers to entering this market. The Commission therefore concludes that USWC's petition meets the requirements of the law and should be granted.

ORS 756.568 permits the Commission to amend or revoke any order resulting from this investigation. That statute gives USWC ratepayers additional protection in combination with the statutes and rules set out above. Should USWC

ORDER NO.

engage in predatory pricing or directly or indirectly subsidize this nonregulated operation through its regulated operations, or should any other circumstance significantly change, the Commission is able to exercise its statutory authority to protect ratepayers.

ORDER

IT IS ORDERED that U S WEST's petition to exempt DS3 service from regulation is granted with the following conditions:

(1) In accordance with OAR 860-027-0052, after deregulation U S WEST will

(a) Charge its existing tariffed billing and collection rates to its unregulated DS3 operation for any billing and collection services rendered;

(b) Record all purchases by U S WEST's regulated operations in the accounting books at the lower of cost or market price; and

(c) File with the Commission appropriate changes to its previously filed cost allocation manual.

(2) U S WEST shall not provide to its unregulated DS3 operations any customer lists or information not available to the general market, and U S WEST will charge the unregulated DS3 operations the Commission-approved tariffed rate for any customer information provided.

(3) U S WEST will adhere to OAR 860-035-0090 in any customer proprietary network information access provided to its DS3 unregulated operations.

Made, entered, and effective _____.

Ron Eachus
Chairman

Roger Hamilton
Commissioner

Joan H. Smith
Commissioner

ORDER NO.

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 of 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. A party may appeal this order to a court pursuant to ORS 756.580.

Ux21fo