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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

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In the Matter of the Petition of U S WEST to)
Exempt from Regulation U S WEST's Centrex)
PRIME Service.)

ORDER

DISPOSITION: PETITION GRANTED WITH CONDITIONS

On February 8, 2000, U S WEST Communications, Inc., (USWC or the Company) petitioned the Commission to Exempt from Regulation its Centrex *PRIME* Service pursuant to ORS 759.030. No persons sought to become interested parties or to intervene in this proceeding.

By letter of March 7, 2000, USWC reported to the Commission that it had been advised by the Commission staff (Staff) that additional time was necessary in order to gather information upon which to base Staff's recommendation to the Commission. USWC and Staff agreed that the requested information could not be compiled quickly enough to allow Staff to present its recommendation to the Commission prior to March 17, 2000, and USWC waived its right to have the Commission take action on its petition within 60 days. Pursuant to a Ruling on March 14, 2000, granting the extension, the Petition timely came before the Commission at the Public Meeting on April 25, 2000.

The Commission has reviewed the petition and the file in this case and makes the following:

FINDINGS OF FACT

Centrex *PRIME* Service

U S WEST's Centrex *PRIME* is a multi-line communications service intended for large users. It consists of a group of station lines that are provided for an individual customer group with the switching function furnished from stored-program-controlled central offices. The station lines provide common access to a predetermined group of 26 standard system features, and, unlike USWC's principle centrex-type service, Centrex Plus, also includes Integrated Services Digital Network (ISDN) digital access lines and Caller Identification Service. Centrex 21, although similar, has more limited

feature functionality and is targeted to the needs of small to medium size businesses. The company does not have a regular tariff for Centrex *PRIME* Service; it is currently only being provided under a thirty-six month special contract to a single customer.

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 factors 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.

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- (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.

DISCUSSION

Long Run Incremental Costs (LRIC)

USWC submitted a cost study which, the Commission concludes, shows that the current Centrex *PRIME* rates for its sole existing customer cover the long-run incremental (LRIC) costs of service. The access arrangements for station lines will vary for each future customer, depending on the number of connections to a location, the desired technology, available technology and operation limitations, such as distance from a serving central office. Because each system will be uniquely designed, rates and charges for station lines and system features will be developed on a customer-specific individual case basis. USWC represents that all future contract pricing will also conform to LRIC principles.

Existence of Price and Service Competition

Unlike price listing, which the Commission may authorize if a service is merely “subject to competition,” ORS 759.030(3) authorizes the Commission to exempt a telecommunications service from regulation only if “price and service competition exist.” ORS 759.030 and OAR 860-032-0025 require that the Commission consider the extent to which services are available from alternate providers in the relevant market and the extent to which the services of alternate providers are functionally equivalent or substitutable at comparable rates, terms and conditions.

The relevant market is USWC’s multi-line service customers¹ in Oregon. The data presented by USWC persuasively demonstrates that it currently faces extensive price and service competition for these large customers from Private Branch Exchanges (PBXs) manufactured by Lucent Technologies, Nortel, Seimens, NEC, Mitel, Toshiba and Panasonic. Furthermore, USWC’s current market share of end users is less than 10 percent.

The Commission concludes that service and price competition exists for the service in question and that USWC does not now hold a dominant position in the relevant market.

The Commission also concludes that the number of competitors established by the data submitted indicates that there are no significant regulatory or economic barriers to entering this market.

¹ Customers with more than fifty station lines per location.

Other Factors

Three additional factors must be considered before granting the USWC Petition to deregulate Centrex *PRIME* Service: (1) the potential for price discrimination by USWC, (2) the prospects for the company's abandonment of some of its customers, and (3) the opportunity for USWC to engage in predatory pricing of services.

Price discrimination occurs when a company charges different prices to similarly situated customers. Deregulation of Centrex *PRIME* services would cause customers to lose their Commission protections from such price discrimination. Vigorous competition, such as clearly exists in this case, counterbalances discriminatory practices and protects customers from the effects of price discrimination.

Customer abandonment is not an issue here. Centrex *PRIME* is a new service for which USWC has only one customer. Elimination of this service is unlikely to harm the public interest.

Predatory pricing in such a highly technological and complex market is a credible risk and must be considered. However, given the current state of competition in the market, there is little reason to believe that USWC would be able to price its Centrex *PRIME* services below LRIC. Indeed, if it were to engage in predatory pricing or other anti-competitive behavior, given the factors described above, it could not benefit from such activity.

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

The Commission therefore concludes that USWC's petition meets the requirements of the law and should be granted.

ORDER

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

- (1) U S WEST shall allocate costs between its regulated and unregulated utility operations in a manner sufficient and appropriate to comply with OAR 860-027-0052.
- (2) U S WEST shall not discontinue its established Centrex Plus service during the two years next following the effective date of this Order.

(3) U S WEST shall not provide to its unregulated Centrex *PRIME* Service operations any customer lists or information except in a manner that comports with the Federal Communications Commission's rules, policies and orders regarding telecommunications carriers' use of Customer Proprietary Network Information (CPNI). *See* 47 C.F.R. Sections 64.2001 *et seq.*; In the Matter of Telecommunications Carriers' Use of Customer Proprietary network Information and Other Customer Information, CC Docket No. 96-115, FCC Order 99-223 (August 16, 1999), which reconsidered FCC Order 98-027 (February 26, 1998).

Made, entered, and effective _____.

Ron Eachus
Chairman

Roger Hamilton
Commissioner

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 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.