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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 Information )  
Filed Pursuant to Oregon Administrative Rule )  
860-023-0055. )

ORDER

DISPOSITION: REQUEST FOR HEARING DISMISSED; STIPULATION ADOPTED

**I. Background**

Oregon Administrative Rule 860-023-0055 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.

On January 3, 2000, the Commission, by Order No. 00-002 (Order), determined that the monthly service quality reports filed with the Commission by U S WEST Communications, Inc., (USWC) pursuant to OAR 860-023-0055 were not entitled to confidentiality. The Commission would, therefore, no longer withhold public disclosure of this information. The Commission stayed the effectiveness of the Order for seven days from the service date in order to provide USWC with the opportunity to request a hearing as provided by ORS 756.515.

USWC timely filed its request and a prehearing conference was held in this docket on February 1, 2000. Pursuant to the procedural schedule adopted at the February 1, 2000, prehearing conference,<sup>1</sup> USWC filed its direct testimony on February 28, 2000. The Citizens Utility Board (CUB) intervened as of right on February 1, 2000, pursuant to ORS 774.180 and OAR 860-013-0021(3); and Parker Telecommunications (Parker) intervened in the proceedings pursuant to a petition filed February 28, 2000, and granted March 23, 2000. The Commission entered a protective order on

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<sup>1</sup> In agreeing to the schedule, USWC agreed on the record to waive its rights under ORS 756.515(5) which requires that a hearing be held within 60 days of a Commission order.

March 17, 2000, to last for the duration of this proceeding (Order No. 00-164). Shortly thereafter, members of the Commission staff (Staff) and USWC filed a joint motion pursuant to OAR 860-014-0085, without opposition, seeking suspension of the procedural schedule for a reasonable period of time, to allow the parties to attempt to resolve the case. A stipulation (Stipulation) among USWC, Staff, CUB and Parker was executed by the parties and filed with the Commission on June 5, 2000. A copy of the Stipulation is affixed to this Order as Appendix A.

The Commission generally encourages the resolution of disputes through negotiations among the interested parties, to the extent that they serve the larger public interest. In this instance, the suspension of the procedural schedule and the negotiation of the Stipulation enabled a more prompt conclusion to this docket than would otherwise have occurred and, in addition, avoided the delays and uncertainties of appellate review. That being the case, we turn to the question of whether the Stipulation itself furthers the public interest as examined in our Order.

## **II. The Effect of the Stipulation on Customers and the Public Health and Safety**

In our Order we noted our strong belief 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:

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. . . . 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.

(Order, page 11).

We also noted, at page 12 of our Order, that telephone customers are entitled to know if service quality problems they are experiencing are the result of problems at USWC's facilities. Such knowledge might enable them to avoid unnecessary expenses and better plan the modification or expansion of their own telecommunications facilities to accommodate growth or other operational changes. We reserved our greatest concern, however, for the impact of the lack of availability of service quality data on the public health and safety:

. . . 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. . . . It crucial for institutions such as [Mercy Medical Center in Roseburg and the Oregon State Police in Springfield] 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 . . . 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. (Order, page 13).

The Stipulation's provisions which directly bear on the disclosure of USWC data, past, present and future, include the following:

U S WEST hereby waives its objections to public disclosure of its service quality reports submitted to the Commission pursuant to OAR 860-023-0055, as well as service quality reports that may be submitted to the Commission in the future pursuant to any statute, rule, order, or other requirement of law. (Stipulation, page 2, lines 17-20).

The Commission may post on its web-site service quality data and information related to basic telecommunications services that it believes may be of interest to customers, potential customers, and the general public, including but not limited to the following information: [table].... The parties acknowledge that the Commission is currently considering service quality standards in pending PUC Dockets AR 375 and AR 324. Accordingly, the parties agree that the Commission may post on its web-site, in addition to the service quality information enumerated above, other service quality information that telecommunications utilities and CLEC's may be required to report to the Commission pursuant to any statute, rule, order, or other requirement of law. (Stipulation, page 3, line 10; page 4, line 12; page 4, lines 20-25).

The portions of the Stipulation cited above are sufficiently broad to satisfy the requirements which we set forth in our Order with respect to the disclosure of USWC service quality reports. Of more immediate effect, each of the persons and entities with pending requests for USWC service quality data provided to us by USWC pursuant to OAR 860-032-0055, will, under the terms of the Stipulation, be furnished with the information they have requested. We thus conclude that the Stipulation furthers the public interest insofar as it addresses our concerns for USWC's customers and the public health and safety.

### **III. The Effect of the Stipulation on Competition in the Telecommunications Industry**

USWC's original opposition to the release of service quality data has centered around its contention that the service quality information is competitively valuable. It claimed that releasing such information would cause substantial harm to its competitive position by exposing vulnerabilities in its markets that competitors would then be able to exploit. At pages 9-11 of our Order, we examined and rejected these assertions:

- (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 [to] those services, or (3) problems USWC might have been experiencing in delivering those services. 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 . . . .
- (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 [a] substantial number of customers away from USWC . . . .

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.

Our prior rejection of USWC's arguments with respect to the monthly service quality reports that it is now submitting pursuant to OAR 860-023-0055 does not, however, terminate our consideration of question of the impact of the Stipulation upon competition in the telecommunications industry in Oregon in general. As noted at page 4, lines 20-21, "The parties acknowledge that the Commission is currently considering service quality standards in pending PUC Dockets AR 375 and AR 324." In those dockets, the Staff has proposed far more detailed reporting than is now contained in USWC's monthly service quality reports,<sup>2</sup> and the Commission has yet to consider whether the collection and disclosure of this or yet additional data will be of benefit to the public.

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<sup>2</sup> An annotated table on pages 3-4 of the Stipulation discusses the standards and the Stipulation's proposed treatment of the data under consideration in those dockets.

As the parties to the Stipulation acknowledge, the Commission uses the Internet to disseminate information rapidly and efficiently to the public. There is a substantial likelihood that we will continue to expand our use of our web site as a means to distribute information whose availability we believe will serve the public interest. Telecommunications providers' service quality data will be a natural fit in that category, and the Stipulation has been drafted in a manner consistent with our intentions, while providing the necessary latitude for our actions: "The Commission shall treat U S WEST and other regulated telecommunications utilities and competitive local exchange carriers ("CLECs") on a comparable basis to the extent practicable. (Stipulation, page 3, lines 7-9).

Finally, the Stipulation contains a broad, general acknowledgement of our ability to tailor future decisions to meet the needs of the public interest: "The parties agree that this Stipulation in no manner binds the Commission in ruling in this case and does not restrict the Commission's exercise of its discretion in this or any other proceeding." (Stipulation, page 6, lines 15-17). We therefore conclude that adopting the Stipulation will not hinder our flexibility in the exercise of our regulatory authority.

#### **IV. Correction of PUC Order No. 00-002**

Our Order states, at page 3, "In March 1999, USWC began designating its monthly service quality reports 'confidential.'" Further, at page 11, "... we emphasize that the monthly wire center reports in dispute were not designated by USWC as confidential prior to our decision in March 1999 . . . ." As demonstrated by the table affixed to the Stipulation as Attachment A, the record underlying our Order was inaccurate. Monthly service quality reports were stamped "confidential" or "proprietary" as early as February 1997, and the vast majority of service quality reports thereafter were marked in a similar fashion somewhere on the document. In adopting the Stipulation we correct this error in our Order.

#### **CONCLUSION**

For the reasons set forth above, the Commission finds that the terms of the Stipulation are in the public interest.

**ORDER**

IT IS ORDERED that:

1. The Stipulation filed June 5, 2000, is hereby adopted and made part of the record in this case, and
2. U S WEST's request for hearing in this matter is dismissed.

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 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.