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TO: THE COMMISSION

DOCUMENT CONTROL MAR 22 1999

FROM: Utilities Division

DOCKETED BY	<i>JM</i>
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DATE: March 22, 1999

RE: IN THE MATTER OF U S WEST COMMUNICATIONS, INC. - TARIFF FILING TO INTRODUCE THE PROVISIONING AGREEMENT FOR HOUSING DEVELOPMENT (DOCKETNO.T-01051B-98-0708)

IN THE MATTER OF U S WEST COMMUNICATIONS, INC. - PETITION FOR APPROVAL OF CIVANO LAND DEVELOPMENT AGREEMENT (DOCKET NO. T-01051B-98-0731)

IN THE MATTER OF U S WEST COMMUNICATIONS, INC. - PETITION FOR APPROVAL OF THE ANTHEM ARIZONA LAND DEVELOPMENT AGREEMENT (DOCKET NO. T-01051B-99-0057)

Docket Nos. T-01051B-98-0708, T-01051B-98-0731, and T-01051B-99-0057 are being considered together because they all deal with provisioning of U S WEST Communications, Inc. (USWC) facilities within new residential housing developments. USWC has informed Staff that the two proposed Land Development Agreements (Civano - Docket No. T-01051B-98-0731 and Anthem - Docket No. T-01051B-99-0057) are an intermediate step between their present Land Development Agreement (LDA) tariff and the proposed tariff contained in Docket No. T-01051B-98-0708. USWC states that the proposed tariff changes are being requested as a result of competition in the marketplace. Under the current LDA tariff, the developer pays in advance to have facilities placed and the amount advanced is then refunded based on the number of new connections (new access lines) that occur within the development. The Civano and Anthem agreements modify this to require no advance payment from the developer, but require reimbursement to USWC if the number of new connections does not meet certain projections. The proposed tariff makes a further modification by not requiring any advance payments or reimbursements unless the costs exceed a cap (the cap equals the distribution and drop portion of the average exchange loop investment, times the number of lots in the development). If the development costs exceeds the cap, then the developer pays a non-refundable amount that is the difference between the cap amount and the actual cost.

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A. Tariff Filing To Introduce The Provisioning Agreement For Housing Developments

On December 11, 1998, USWC filed revisions to its Exchange and Network Services Tariff Section 4. These revisions introduce a new process for providing distribution facilities in new housing developments. The new process, which is referred to as the Provisioning Agreement for Housing Development (PAHD), replaces USWC's existing LDA. The present LDA tariff requires that the developer pay in advance the costs to have outside plant facilities placed in a new development. The advance amount collected from the developer by USWC is refunded over the term of the LDA, if the number of new service connections equal the number of lots in the development. Under the proposed tariff USWC would not require any advance payment unless the per lot cost exceeds a Company determined cap, which shall equal the distribution and drop portion of the average exchange loop investment times the number of lots in the development. USWC states that they are proposing these changes as a result of competition in the marketplace and in response to the way competitors are approaching developers.

USWC states that the current LDA that places all of the risk on the developer is no longer workable in a competitive market where others are willing to provide the facilities at no cost to the developer. Staff has determined that other service providers are installing facilities that can be used to provide telecommunications services at no cost to the developer. While Staff agrees that USWC needs the latitude to meet competitive challengers in residential developments where alternative service providers exist, we are concerned that the PAHD tariff could result in investment in unused facilities by USWC. Thus, the potential exists that ratepayers could be asked to pay for these facilities in a future rate application. To prevent this, Staff feels that a tracking mechanism needs to be put in place for identifying the financial performance of these projects. Staff recommends approval (with the two changes listed below) of the proposed tariff with the condition that USWC be required to identify and keep records of all PAHD projects in such a manner that will allow Staff to review the details of these projects in a future (not the rate filing currently docketed) USWC rate filing. Staff recommends that a decision on how these projects should be handled for rate making purpose not be made until the future rate proceeding.

In addition, Staff recommends that USWC modify its proposed PAHD tariff as follows:

1. In Section 4.1B the last sentence reads, "The Company may, at its discretion, modify requirements and charges to allow it to respond to competition." Staff believes this is much too broad and the sentence should read, "The Company may, at its discretion, modify requirements and charges pertaining to supporting structures which includes, but is not limited to, pipes, conduits, poles, trenches, and backboards for the placement of telephone facilities in housing developments where an alternative provider is available."
2. Section 4.4.B.8 reads, "The PAHD may vary terms and conditions as appropriate." Staff believes this is much too broad and the sentence should read, "The PAHD may vary terms and conditions as appropriate to respond to developer needs in those developments where an alternative provider is available."

B. Petition For Approval Of Civano Land Development Agreement

On December 18, 1998, USWC filed an application for approval of a LDA between USWC and The Community of Civano LLC (Civano). Civano plans to construct a development known as The Community of Civano (the Community) which consists of approximately 1,100 acres of land in Pima County. Pursuant to A.A.C. R14-2-506 and its tariff governing construction charges (Section 4, USWC Exchange and Network Services Tariff) USWC has entered into an agreement with Civano for the construction of feeder and distribution facilities, which would serve the Community. USWC tariffs require developers or builders in new housing developments to pay USWC in advance its cost for installing facilities in new housing developments. In its filing, USWC is requesting that the Commission waive the normal LDA requirement for prepayment. Under the agreement, Civano would endorse USWC as the preferred provider of telecommunications service to the Community's residents and businesses. The term of the agreement is ten years, during which time Civano agrees not to enter into a similar agreement with another service provider. However, the agreement does not preclude other carriers from serving the development. The agreement also contains a provision for USWC to recoup its investment if the number of projected Access Lines does not meet or exceed the total number of lots in the development build out schedule at the end of each three year period. In summary, the proposed agreement introduces a new process for providing facilities to serve new housing developments.

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Staff has reviewed USWC supporting information and recommends approval of the agreement because the proposed Civano LDA does not preclude other service providers from serving potential customers and the agreement contains a provision for USWC to recoup its investment if the development does not build out as planned.

C. Petition For Approval Of The Anthem Arizona Land Development Agreement

On February 9, 1999, USWC filed an application for approval of a LDA between USWC and the Anthem Arizona, L.L.C. (Anthem). Anthem plans to construct a development known as The Del Webb Anthem Phoenix ("Development") which consists of 13 parcels of land in Maricopa County. Pursuant to A.A.C. R14-2-506 and its tariff governing construction charges (Section 4, USWC Exchange and Network Services Tariff), USWC has entered into an agreement with Anthem for the construction of feeder and distribution facilities that would serve the Development. USWC tariffs require developers or builders in new housing developments to pay USWC in advance its cost for installing facilities in new housing developments.

In its filing, USWC is requesting that the Commission waive the normal LDA requirement for prepayment. Under the agreement, Anthem would endorse USWC as the preferred provider of telecommunications service to the Development's residents and businesses. The term of the agreement is ten years, during which time Anthem agrees not to enter into a similar agreement with another service provider. However, the agreement does not preclude other carriers from serving the development. The agreement also contains a provision for USWC to recoup its investment if the number of Access Lines does not meet or exceed 95% of the total number of lots within each Plat at the end of five years. In summary, the proposed agreement introduces a new process for providing facilities to serve new housing developments.

Staff has reviewed USWC supporting information and recommends approval of the agreement because the proposed Anthem LDA does not preclude other service providers from serving potential customers and the agreement contains a provision for USWC to recoup its investment if the development does not build out as planned.

Ray T. Williamson

Ray T. Williamson

Acting Director

Utilities Division

RTW:DWS:LSS:sjs/JMA

ORIGINATORS: Del Smith and Lester Sawyers

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 JIM IRVIN
Commissioner - Chairman
3 TONY WEST
Commissioner
4 CARL J. KUNASEK
Commissioner
5

6 IN THE MATTER OF THE APPLICATION)
OF U S WEST COMMUNICATIONS, INC.)
7 TARIFF FILING TO INTRODUCE A NEW)
PROVISIONING AGREEMENT FOR NEW)
8 HOUSING DEVELOPMENTS)

DOCKET NO. T-01051B-98-0708

9
10 IN THE MATTER OF THE PETITION)
OF U S WEST COMMUNICATIONS, INC.)
11 FOR APPROVAL OF CIVANO LAND)
DEVELOPMENT AGREEMENT)

DOCKET NO. T-01051B-98-0731

12
13 IN THE MATTER OF U S WEST)
COMMUNICATIONS, INC. PETITION)
14 FOR APPROVAL OF THE ANTHEM ARIZONA)
LAND DEVELOPMENT AGREEMENT)

DOCKET NO. T-01051B-99-0057

DECISION NO. _____

ORDER

15
16 Open Meeting
March 30 and 31, 1999
17 Phoenix, Arizona

18 BY THE COMMISSION:

19 FINDINGS OF FACT

20 **A. Tariff Filing To Introduce The Provisioning Agreement For Housing Development**

21 1. U S WEST Communications, Inc. (USWC) is certified to provide telephone
22 service as a public service corporation in the State of Arizona.

23 2. On December 11, 1998, USWC submitted tariff revisions to introduce their
24 Provisioning Agreement for Housing Development (PAHD):

Exchange And Network Services Tariff

25	Section 1	Page	4 Release 2
	Section 1	Page	20 Release 10
26	Section 1	Page	24 Release 8
	Section 4	Page	Index Release 2
27	Section 4	Page	1 Release 2
	Section 4	Page	5 Release 5
28			

Section 104 Page Index Release 1
Section 104 Pages 1-5 Release 1

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3. These revisions introduce a new process for providing distribution facilities in new housing developments and replace USWC's existing Land Development Agreement (LDA).

4. The present tariff requires that the developer pay the up-front costs to have outside plant facilities placed. The money collected by USWC is refunded annually to the developer on the basis of the number of lots taking service from USWC.

5. Under the proposed tariff, USWC does not require up-front payments unless the per lot cost exceeds a Company determined cap, which shall equal the distribution and drop portion of the average exchange loop investment times the number of lots in the development.

6. USWC states that the current LDA that places all of the risk on the developer is no longer workable in a competitive market where others are willing to provide the facilities at no cost to the developer.

7. Staff has determined that other service providers are installing facilities that can be used to provide telecommunications services at no cost to the developer.

8. Staff agrees that USWC needs the latitude to meet competitive challengers in residential developments where alternative service providers exist. However, Staff is concerned that the PAHD tariff could result in investment in unused facilities by USWC, thereby creating the potential for ratepayers to be asked to pay for these unused facilities in a future rate application.

9. Staff recommends approval of the tariff with the modification that USWC be required to identify and keep records of all PAHD projects in such a manner that will allow Staff to review the details of these projects in a future USWC rate filing.

10. In addition, Staff recommends that a decision on how these projects should be handled for rate making purposes not be made until the future rate proceeding.

11. In addition, Staff recommends that USWC modify its proposed PAHD tariff as follows:

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...

1 a. In Section 4.1B the last sentence should read, "The Company may, at its
2 discretion, modify requirements and charges pertaining to supporting structures
3 which includes, but is not limited to, pipes, conduits, poles, trenches, and
4 backboards for the placement of telephone facilities in housing developments
5 where an alternative provider is available."

6 b. Section 4.4.B.8 should read, "The PAHD may vary terms and conditions as
7 appropriate to respond to developer needs in those developments where an
8 alternative provider is available."

9 **B. Petition For Approval Of Civano Land Development Agreement**

10 12. On December 18, 1998, USWC filed an application for the approval of a LDA
11 between USWC and The Community of Civano LLC (Civano).

12 13. Civano plans to construct a development known as the Community of Civano (the
13 Community), which consists of approximately 1,100 acres of land in Pima County.

14 14. Pursuant to A.A.C. R14-2-506 and its tariff governing construction charges
15 (Section 4, USWC Exchange and Network Services Tariff) USWC has entered into an agreement
16 with Civano for the construction of feeder and distribution facilities, which would serve the
17 Community.

18 15. USWC tariffs require developers or builders in new housing developments to pay
19 USWC in advance its cost for installing facilities in new housing developments. In its filing,
20 USWC is requesting that the Commission waive the normal LDA requirement for prepayment.

21 16. Under the agreement, Civano would endorse USWC as the preferred provider of
22 telecommunications service to the Community's residents and businesses.

23 17. The term of the agreement is ten years, during which time the developer agrees
24 not to enter into a similar agreement with another service provider. However, the agreement does
25 not preclude other carriers from serving the development.

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1 18. The agreement also contains a provision for USWC to recoup its investment if the
2 number of projected Access Lines does not meet or exceed the total number of lots in the
3 development build out schedule at the end of each three year period.

4 19. In summary, the proposed agreement introduces a new process for providing
5 facilities to serve new housing developments.

6 20. Staff has reviewed USWC supporting information and recommends approval of
7 the agreement because the proposed Civano LDA does not preclude other service providers from
8 serving potential customers and the agreement contains a provision for USWC to recoup its
9 investment if the development does not build out as planned.

10 **C. Petition For Approval Of The Anthem Arizona Land Development Agreement**

11 21. On February 9, 1999, USWC filed an application for approval of a LDA between
12 USWC and the Anthem Arizona, L.L.C. (Anthem).

13 22. Anthem plans to construct a development known as "Del Webb Anthem Phoenix"
14 ("Development"), which consists of 13 parcels of land in Maricopa County.

15 23. Pursuant to A.A.C. R14-2-506 and its tariff governing construction charges
16 (Section 4, USWC Exchange and Network Services Tariff) USWC has entered into an agreement
17 with Anthem for the construction of feeder and distribution facilities, which would serve the
18 Development.

19 24. USWC tariffs require developers or builders in new housing developments to pay
20 U S WEST in advance its cost for installing facilities in new housing developments. In its filing
21 USWC is requesting that the Commission waive the normal LDA requirement for prepayment.

22 25. Under the agreement, Anthem would endorse USWC as the preferred provider of
23 telecommunications service to the Development's residents and businesses.

24 26. The term of the agreement is ten years, during which time Anthem agrees not to
25 enter into a similar agreement with another service provider. However, the agreement does not
26 preclude other carriers from serving the development.

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ORDER

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THEREFORE, IT IS ORDERED that the tariff be and hereby is approved subject to the modifications discussed in the body of this Order.

IT IS FURTHER ORDERED that USWC shall identify and keep records of all PAHD projects as outlined by Staff in Finding of Fact No. 9.

IT IS FURTHER ORDERED that USWC shall file a revised tariff in compliance with Finding of Fact No. 11.

IT IS FURTHER ORDERED that the Civano and Anthem Land Development Agreements be and are hereby approved.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

COMMISSIONER - CHAIRMAN COMMISSIONER COMMISSIONER

IN WITNESS WHEREOF, I, STUART R. BRACKNEY, Acting Executive Secretary of the Arizona Corporation Commission, have hereunto, set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____, 1999.

STUART R. BRACKNEY
Acting Executive Secretary

DISSENT: _____

RTW:DWS:LSS:sjs/JMA