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BRIAN C. McNEIL  
EXECUTIVE SECRETARY



ARIZONA CORPORATION COMMISSION

CARL J. KUNASEK  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
WILLIAM A. MUNDELL  
COMMISSIONER

DATE: August 22, 2000

DOCKET NO.: T-01051B-00-0162

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Marc Ster. The recommendation has been filed in the form of an Opinion and Order on:

DUKE WELLINGTON vs. U S WEST COMMUNICATIONS, INC.  
(COMPLAINT)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

AUGUST 31, 2000

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

SEPTEMBER 12, 2000 and SEPTEMBER 13, 2000

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250.

BRIAN C. McNEIL  
EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 CARL J. KUNASEK  
CHAIRMAN  
3 JIM IRVIN  
COMMISSIONER  
4 WILLIAM A. MUNDELL  
COMMISSIONER  
5

6 DUKE WELLINGTON,  
7 Complainant,  
8 vs.  
9  
10 U S WEST COMMUNICATIONS, INC.,  
11 Respondent.

DOCKET NO. T-01051B-00-0162

DECISION NO. \_\_\_\_\_

**OPINION AND ORDER**

12 **BY THE COMMISSION:**

13 DATE OF HEARING: May 8, 2000  
14 PLACE OF HEARING: Phoenix, Arizona  
15 ADMINISTRATIVE LAW JUDGE: Marc E. Stern  
16 APPEARANCES: Mr. Duke Wellington, in propria persona; and  
17 FENNEMORE CRAIG, P.C., by Ms. Karen E. Errant,  
18 on behalf of U S WEST Communications Inc.  
19

20 **BY THE COMMISSION:**

21 On March 10, 2000, Mr. Duke Wellington ("Complainant") filed with the Arizona  
22 Corporation Commission ("Commission") a Complaint against U S West Communications, Inc  
23 ("USW or Respondent")

24 On March 29, 2000, USW filed its Answer to the Complaint of Mr. Wellington.

25 On April 5, 2000, by Procedural Order the above-captioned matter was scheduled for a pre-  
26 hearing conference.

27 On April 27, 2000, the pre-hearing took place as scheduled and the parties agreed to a hearing  
28

1 date. Subsequently, by Procedural Order, the Commission scheduled the proceeding for a hearing on  
2 May 8, 2000.

3 On May 8, 2000, a full public hearing was commenced before a duly authorized  
4 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Complainant  
5 appeared on his own behalf and USW appeared with counsel. Testimony was taken and exhibits  
6 entered into evidence during the course of the proceeding. Following the conclusion of the  
7 proceeding, the matter was then taken under advisement pending submission of a Recommended  
8 Opinion and Order to the Commission.  
9

10 \* \* \* \* \*

11 Having considered the entire record herein and being fully advised of the premises, the  
12 Commission finds, concludes, and orders that:

13 **FINDINGS OF FACT**

14 1. Pursuant to authority granted by the Commission and at all times herein, USW, a  
15 Colorado corporation, was engaged in the business of providing telecommunications service to the  
16 public in various parts of Arizona prior to its merger with Qwest Communications Corporation and  
17 its subsidiaries as authorized in Decision No. 62672 (June 30, 2000).<sup>1</sup>

18 2. On March 10, 2000, Complainant, a resident of Glendale, Arizona, filed the above-  
19 captioned Complaint against USW wherein it was alleged that the Respondent had failed to provide  
20 adequate telephone service because it lacked the circuits necessary to provide adequate service for  
21 Mr. Wellington particularly when he attempted to call his daughter who lives in New River, Arizona.  
22

23 3. According to USW's records, Mr. Wellington first notified the Respondent about his  
24 problem on October 7, 1999 when he phoned USW.  
25

26 4. In Mr. Wellington's Complaint, he enumerated his calling problems on the following  
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<sup>1</sup>The merged entity is now known as Qwest Corporation.

1 specified occasions: four times on January 25, 2000; four times on January 26; four times on January  
2 28; two times on January 29; five times on January 31, four times on February 1; three times on  
3 February 2; and five times on February 3.

4 5. Besides enumerating the dates and number of times his problems arose in his  
5 Complaint, Mr. Wellington requested the following relief: that the Respondent provide enough  
6 circuits for him to call whom he wished; that 75 percent of his telephone bill be refunded for the year  
7 1999 with no interruptions in service; and that, USW pay "\$500 for all the stress and rigmarole I have  
8 gone through."  
9

10 6. Although the Complainant is a resident of Glendale, his phone service is provided by  
11 what is known as the Peoria switch.

12 7. The problem that was experienced by Mr. Wellington is characterized as a fast busy  
13 signal and a recorded message as follows: "all circuits are busy now, please try your call again  
14 later."<sup>2</sup>  
15

16 8. Throughout the proceeding, Mr. Wellington maintained that the "call blocking" he  
17 experienced was a denial of service by USW and constituted an illegal price increase.

18 9. There was no evidence that Mr. Wellington was failing to get a dial tone when he  
19 attempted to use his telephone.

20 10. Besides experiencing busy circuits when attempting to contact his daughter, Mr.  
21 Wellington mentioned some problems in calling either a supermarket or an office of the Disabled  
22 American Veterans.  
23

24 11. During the hearing, when Mr. Wellington was cross-examined concerning whether his  
25 service had improved recently, he was either non-responsive or argumentative.

26 12. A regulatory manager who testified on behalf of USW acknowledged that the  
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28 <sup>2</sup> USW classifies the problem as "call blocking."

1 Respondent had reason to believe that Mr. Wellington's allegations concerning "call blocking"  
2 during the periods complained of were true. He pointed out that the rapid growth of USW's customer  
3 base in the area and the duration of calls related to "internet usage" were contributing factors too.

4 13. The USW computer switch for the Peoria service area lacked the capacity to handle  
5 the current volume of service at all relevant times herein, and had been due for replacement since  
6 April 12, 1999. However, because of the complexity involved in the replacement of the switch, the  
7 replacement process usually takes approximately one year and was not completed until on or about  
8 May 4, 2000.

9 14. Additionally, because Mr. Wellington's daughter lives in the New River area, her local  
10 service is provided by the Deer Valley switch which also has been experiencing over capacity  
11 problems. It serves the New River area by means of an "umbilical" which is termed a "remote"  
12 switch. Again, because of rapid customer growth and increased telephone usage, the umbilical to  
13 New River was in need of an upgrade also.

14 15. The record established that USW has performed upgrades on the umbilical and on or  
15 about June 4, 2000, had added additional capacity to that line.

16 16. According to the Respondent's representative, since the replacement of the Peoria  
17 switch and the upgrades to the Deer Valley umbilical serving New River, there have been no  
18 instances of call blocking between Mr. Wellington's service area and his daughter's in New River.

19 17. USW is continuing to address the overloaded circuits experienced by callers in the  
20 New River area with plans to install a free standing switch for New River rather than "trunking" calls  
21 to and from New River through the Deer Valley switch.

22 18. Respondent's witness testified regarding the provisions of USW's Service Quality  
23 Plan Tariff ("Tariff"). He pointed out that the Tariff at § 2.5.5 sets forth the network call completion  
24 requirements and that as of May 1, 2000, the Respondent's network met the 98% requirement as set  
25

1 forth in the Tariff. However, there was no evidence that the Respondent met the required call  
2 completion percentage prior to May 1, 2000.

3 19. A USW technician went to the Complainant's residence and checked its service line  
4 and found no problems with USW's side of the line in December 1999.

5 20. USW's witness pointed out that under the terms of the Respondent's Tariff, USW is  
6 not required to provide a credit to a customer's bill in the event of a service disruption unless it is for  
7 a period in excess of 24 hours in which case, the customer is credited 1/30th of his bill not to exceed  
8 the monthly billed amount, and that call blocking or busy circuits do not qualify as an out of service  
9 problem which would result in a credit.  
10

11 21. However, in an effort to resolve Mr. Wellington's Complaint, USW, prior to the  
12 hearing, offered Mr. Wellington approximately what he had requested in the form of a credit equal to  
13 a 75 percent refund of his 1999 telephone bill,<sup>3</sup> but USW declined to offer any allowance for the  
14 alleged stress claimed by Mr. Wellington because USW believes this part of his claim is outside the  
15 Commission's jurisdiction.  
16

17 22. Under the circumstances herein, we understand Mr. Wellington's frustration that he  
18 experienced with USW's service. However, the Commission and USW are bound by the terms of its  
19 Tariff which does not provide for any credits or refunds to a customer who experiences periodic  
20 episodes or repeated instances of call blocking. We believe that USW acted equitably in attempting  
21 to resolve Mr. Wellington's Complaint by offering him a refund although it was not bound by law to  
22 do so.  
23

24 23. The Commission lacks authority to award any monetary damages for stress sought by  
25 Mr. Wellington since Arizona courts have long held that the Commission does not have the power to  
26 award money damages as it is a judicial power vested in the courts. See Easton v. Broomfield, 116  
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28 <sup>3</sup> This offer of settlement was refused by Mr. Wellington.

1 ARIZ. 576, 582, 570 P. 2d 744, 750 (1977) and Trico Electric Cooperative v. Ralston, 67 ARIZ. 358,  
2 363, 196 P. 2d 470 (1948).

3 24. The USW offer to refund 75 percent of Mr. Wellington's 1999 telephone bill in the  
4 form of a credit is a fair and reasonable resolution to the Complaint.

5 **CONCLUSIONS OF LAW**

6 1. USW is a public service corporation within the meaning of Article XV of the Arizona  
7 Constitution A.R.S. § 40-246.

8 2. The Commission has jurisdiction over USW as described hereinabove.

9 3. There is no evidence that USW violated its Tariff on file with the Commission or that  
10 there have been any other violations of Arizona Law.

11 4. The offer of USW for a 75 percent credit of Mr. Duke Wellington's 1999 telephone  
12 bill should be approved.  
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1 SERVICE LIST FOR: DUKE WELLINGTON vs. U S WEST COMMUNICATIONS,  
2 INC.

3 DOCKET NO. T-01051B-00-0162

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