JIM IRVIN
COMMISSIONER - CHAIRMAN
RENZ D. JENNINGS
COMMISSIONER
L J. KUNASEK
COMMISSIONER

0000157048

JACK ROSE
EXECUTIVE SECRETARY

ARIZONA CORPORATION COMMISSION

DATE: DECEMBER 29, 1997

DOCKET NO: T-01051B-97-200

TO ALL PARTIES:

Enclosed please find the recommendation of Hearing Officers Jerry L. Rudibaugh and Lyn Farmer. The recommendation has been filed in the form of an Opinion and Order on:

MCI TELECOMMUNICATIONS CORPORATION 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 Hearing Officer 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:

JANUARY 7, 1998

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

JANUARY 13, 1998 and JANUARY 14, 1998

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

Jack Rose
JACK ROSE
EXECUTIVE SECRETARY

BEFORE THE ARIZONA CORPORATION COMMISSION

JIM IRVIN
COMMISSIONER - CHAIRMAN
RENZ D. JENNINGS
COMMISSIONER
CARL J. KUNASEK
COMMISSIONER

IN THE MATTER OF MCI TELECOMMUNICATIONS CORPORATION AGAINST U S WEST COMMUNICATIONS, INC. REGARDING INTRASTATE ACCESS CHARGES OR, IN THE ALTERNATIVE, REQUEST THAT THE COMMISSION INVESTIGATE U S WEST'S INTRASTATE ACCESS CHARGES.	DOCKET NO. T-01051B-97-200 DECISION NO. _____ **OPINION AND ORDER**

DATES OF HEARING: October 27, 1997 (Oral Arguments)

PLACE OF HEARING: Phoenix, Arizona

PRESIDING OFFICER: Jerry L. Rudibaugh, Chief Hearing Officer and Lyn Farmer, Assistant Chief Hearing Officer

APPEARANCES: Mr. Thomas H. Campbell, LEWIS & ROCA, LLP, on behalf of MCI Telecommunications Corporation; and

Mr. Timothy Berg, FENNEMORE CRAIG, Mr. William Ojile, U S West Law Department and Ms. Pamela Hedlin, U S West Public Policy on behalf of U S West Communications, Inc.

BY THE COMMISSION:

On April 18, 1997, MCI Telecommunications Corporation ("MCI") filed a Complaint with the Arizona Corporation Commission ("Commission") alleging that U S West Communications, Inc.'s ("U S WEST") intrastate switched access charges are unlawful, unjust, unreasonable, and discriminatory. On May 12, 1997, MCI filed an Errata to its Complaint. On May 14, 1997, U S WEST filed a Motion to Dismiss ("Motion") and Response to the Complaint. On June 4, 1997, MCI filed a Motion to Amend Complaint and a Response to the U S WEST Motion. On June 16, 1997, U S WEST filed a Reply to the MCI Response. Also, on June 16, 1997, U S WEST filed a Response to the Motion to Amend Complaint filed by MCI. On October 6, 1997, MCI filed a Request for Hearing or, in the alternative, Procedural Order ("Request"). Oral arguments were held on the Request on October 27, 1997. U S WEST filed a Supplemental Brief on December 4, 1997.

DISCUSSION

Introduction

MCI alleged that U S WEST's access charges violate A.R.S. §§40-334 and 40-361 because they are excessive in relation to the economic cost of providing service and as a result unduly discriminate against interexchange carriers ("IXCs") and their customers. MCI estimated that U S WEST's access charges in Arizona must be reduced by approximately $33 million per year. According to MCI, the IXCs are currently subsidizing their intraLATA competition and potential interLATA competition (U S WEST). MCI asserted that pricing at economic cost is efficient, consistent with the Commission's preferred pricing standard, and consistent with the Telecommunications Act of 1996 ("Act"). MCI indicated that the Federal Communications Commission ("FCC") has identified access reform as one of the reforms that must occur for effective competition to develop across the country.

In its May 14, 1997 Motion, U S WEST asserted that the Complaint must be dismissed pursuant to A.R.S. §40-246 since the Complaint was not signed by at least 25 consumers of access services. Further, U S WEST indicated the Complaint was an impermissible collateral attack on Decision No. 58927, dated January 3, 1995. According to U S WEST, MCI argues that the access charges give U S WEST an advantage over IXCs but MCI fails to acknowledge that U S WEST bears the burden of being the carrier of last resort. Finally, U S WEST concluded that above-cost access rates have been established by the Commission for sound policy reasons such as the subsidation of local residential and rural service.

In its June 4, 1997 Motion to Amend Complaint, MCI attached signatures of at least 25 customers in support of its Complaint. In Response to the U S WEST Motion, MCI emphasized that it was entitled to bring its Complaint pursuant to A.R.S. §40-246. Furthermore, MCI asserted that A.R.S. §40-252 authorizes the Commission to rescind, alter or amend any Order or Decision made by it.

Analysis

MCI was a party to U S WEST's last rate case (Decision No. 58927). In that Decision, intrastate switched access charges were established as part of the overall rate design to support the approved revenue levels of U S WEST. MCI did not file an appeal of the access charges set in that case. As a result, we would normally conclude that MCI was collaterally estopped from relitigating the access

charges established in Decision No. 58927.

The enactment of the Act established a policy to move competition into monopoly markets. In a competitive environment, prices of services such as access charges would need to be set at economic cost levels. MCI alleged and U S WEST did not dispute that access charges for U S WEST exceed economic costs. As a result, MCI has challenged the reasonableness of the access charges pursuant to A.R.S. §40-246.

Based on the filed motions, responses, replies, oral arguments, etc., it is apparent that the access charges are not set at their economic cost levels. We could hold a hearing to confirm what is not in dispute. While the Commission agrees there is a need to review the level at which access charges are set, we cannot change those cost levels without consideration of the overall impact of any rate change upon the rate of return on the fair value rate base of U S WEST.[1] Consequently, the access charges which were determined to be just and reasonable as part of Decision No. 58927 will need to be reviewed as part of a U S WEST rate case. The filing of a rate case is entirely within the power of U S WEST (or by Order of the Commission). We find that the pricing of access charges should be taken into consideration as part of any request by U S WEST to enter into Arizona's interLATA toll market. Based on the Discussion above, we find that U S WEST's Motion should be granted.

* * * * * * * * * *

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

FINDINGS OF FACT

1. U S WEST is a Colorado corporation engaged in providing telephone and other telecommunication service to the public within Arizona.

2. On April 18, 1997, MCI filed a Complaint with the Commission alleging that U S WEST's rates for switched access charges are unlawful, unjust, unreasonable, and discriminatory.

3. On May 12, 1997, MCI filed an Errata to its Complaint.

4. On May 14, 1997, U S WEST filed its Motion and Response to the Complaint.

---

[1] See Scates v. Arizona Corporation Commission (App. 1978) 118 Ariz. 531, 578 P.2d 612.

5. On June 4, 1997, MCI filed a Motion to Amend Complaint.

6. On June 4, 1997, MCI filed its Response to the U S WEST Motion.

7. On June 16, 1997, U S WEST filed a Reply to the MCI Response.

8. On June 16, 1997, U S WEST filed a Response to the Motion to Amend Complaint by MCI.

9. On October 6, 1997, MCI filed its Request.

10. Oral arguments were held on the Request on October 27, 1997.

11. U S WEST filed a Supplemental Brief on December 4, 1997.

12. U S WEST's access charges were established in Decision No. 58927.

13. MCI participated in the docket associated with Decision No. 58927.

14. MCI did not file a motion for rehearing of Decision No. 58927.

15. The Act established a policy to move competition into monopoly markets.

16. In a competitive environment, prices of services such as access charges would need to be set at economic cost levels.

17. There is no dispute that U S WEST's access charges are not set at their economic cost levels.

CONCLUSIONS OF LAW

1. U S WEST is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§40-203 and 40-246.

2. The Commission has jurisdiction over U S WEST and of the subject matter of the Complaint.

3. Pursuant to A.R.S. §40-252 and Scates, Decision No. 58927 is conclusive of the issue raised in the Complaint.

. . .

. . .

. . .

. . .

. . .

ORDER

IT IS THEREFORE ORDERED that the Complaint filed on April 18, 1997, by MCI Telecommunications Corporation against U S WEST Communications, Inc. be, and the same is hereby dismissed.

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, JACK ROSE, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____, 1998.

JACK ROSE
EXECUTIVE SECRETARY

DISSENT _____
JLR:dap

SERVICE LIST FOR: MCI TELECOMMUNICATIONS CORPORATION vs. U S WEST COMMUNICATIONS, INC.

DOCKET NO.: T-01051B-97-200

Timothy Berg
FENNEMORE CRAIG
3003 N. Central Avenue, Suite 2600
Phoenix, Arizona 85012
Attorneys for U S WEST Communications, Inc.

Thomas H. Campbell
LEWIS & ROCA
40 North Central Avenue
Phoenix, Arizona 85004
Attorneys for MCI Telecommunications Corporation

Paul Bullis, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Carl Dabelstein
Director Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007