

ISSUE DATE: May 22, 1996

DOCKET NO. P-421/EM-96-264

ORDER APPROVING, IN PART, AND DISAPPROVING, IN PART, CERTAIN PREMIUM  
BASED PROMOTIONS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Joel Jacobs	Chair
Tom Burton	Commissioner
Marshall Johnson	Commissioner
Dee Knaak	Commissioner
Don Storm	Commissioner

In the Matter of U S WEST Communications,  
Inc. Promoting Four Service Options to  
Residential Customers

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**PROCEDURAL HISTORY**

On March 14, 1996, U S WEST Communications, Inc, (USWC) submitted revisions to its tariff and price list to promote four service options to residential customers.

On April 9, 1996, the Minnesota Department of Public Service (the Department) filed its comments, recommending approval.

On April 30, 1996, the Commission met to consider this matter.

**FINDINGS AND CONCLUSIONS**

**A. USWC's Promotions**

The four promotions proposed by USWC in this docket were:

<b>Services Promoted</b>	<b>Customer Benefit</b>	<b>Promotion Length</b>
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<b>Option 1</b>	Call Waiting, 3-WAY Calling, and Continuous Redial	a free magazine subscription: "Out", "Entertainment Weekly" or "Wired"	3/19/96 - 7/17/96
<b>Option 2</b>	Caller ID, Priority Call, and Call Rejection	a free magazine subscription: "Out", "Entertainment Weekly" or "Wired"	4/22/96 - 6/30/96
<b>Option 3</b>	"The Real Deal": 11 custom calling and CLASS services for one set monthly rate	a free magazine subscription: "Out", "Entertainment Weekly" or "Wired"	4/22/96 - 6/30/96
<b>Option 4</b>	Voice Messaging Service	a free compact disc entitled "Outrageous"	3/19/06 - 4/13/96 and 5/26/96 - 6/30/96 <sup>1</sup>

USWC provided a financial analysis showing the projected income effect of each of the services subject to the promotion. The Company's analysis included estimates of units sold in the absence of a promotion, units sold during the promotion, the average life of the service, the recurring cost, and the nonrecurring cost.

**B. The Department's Recommendation**

In its written comments, the Department based its support for the promotions on two factors: 1) that the promotion appeared to cover its costs as required by the statute and 2) that the promotion would give customers the ability to receive optional services at lower prices than in the absence of a promotion.

At the hearing on this matter, the Department reiterated that the promotion appeared to cover its costs but noted that the Company's estimates showed the promotion just barely covering its costs and questioned the business sense of the promotion. The Department also acknowledged that its analysis had not considered whether the Company's plan to target certain perceived market groups within a class and offering premiums of targeted attractiveness was consistent with the "reasonable distinctions" standard of Minn. Stat. § 237.626 (1994).

**C. Commission Analysis**

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<sup>1</sup> The dates for Option 4 (the Voice Messaging promotion) were bifurcated because a separate Voice Messaging promotion was planned for March 11, 1996 through April 20, 1996.

Minn. Stat. § 237.626 (1994) authorizes three kinds of promotions: 1) promotions that waive part or all of a recurring or non-recurring charge; 2) promotions involving a redemption coupon; and 3) promotions that offer a premium as an inducement to purchase a service.

In this Order the Commission examines promotions that offer premiums of varying values rather than offering a fixed cost reduction, waiver, or redemption coupon.

Minn. Stat. § 237.626 (1994) states that the anti-discrimination statute<sup>2</sup> does not apply to promotions but requires that

the customer group to which the promotion is available must be based on reasonable distinctions among customers.

The Commission has serious concerns regarding the promotions involved in this docket, particularly with respect to the promotions' compliance with the "reasonable distinctions" provisions of Minn. Stat. § 237.626 (1994).

First: with respect to Options 1, 2, and 3, the Company acknowledged that it is promoting various referenced services to groupings of persons within the residential class that it views as sub-markets within the residential class.

The statute does not simply require that sub-groups be distinguished or distinguishable from each other or from the population in general. That is easily done in many instances but is insufficient. The statute requires more. It requires that the subgroup in question be distinct from the mass of consumers with respect to their activity as customers of the telephone service being promoted and that there is a logical link between the distinction identified and the benefit being offered.

The question that the Commission must ask in determining the appropriateness of making special offers to certain groups is whether the targeted group has characteristics (in their capacity as telephone customers) that distinguishes them from other telephone customers with respect to the promoted services so as to warrant the special benefit being offered to secure their purchase of the services in question. Without attempting to delineate the ways in which a sub-group can be shown to be distinctive with respect to its consumption of a promoted telephone service, the statute appears to require information, for example, that the targeted sub-groups are distinctive in the sense of their under-utilization of these services or in their asserted potential or proclivity for using these services.

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<sup>2</sup> Minn. Stat. § 237.09 (1994).

Second: in Options 1, 2, and 3, the Company offered premiums of significantly different dollar value, ranging from \$26 to \$52. This would not be a cause for concern if the premiums were not specifically targeted to different groups. The Company acknowledged that the magazine “Out” was being offered to induce the gay sub-group and “Wired” was being offered as an inducement to the computer user sub-group. The Company provided no reasonable explanation for providing premiums of widely differing values to these two target groups. This does not seem fair and, in terms of the statute, may fail to reflect “reasonable distinctions among customers”. An additional unexplained element lending an air of unreasonableness to the distinctions among customers made in these promotions is the fact that the same range of premiums (\$26 to \$52) is available regardless of whether the customer is interested in a service package whose price is \$6.95 per month or \$14.95 per month.

Third: in Option 4, the Company proposed to give a single premium (a compact disc entitled “Outrageous”) which does not have a reasonably equal level of appeal among all the Company’s residential customers. The premium offered is universally “available”, then, only in the narrowest sense, just as a premium of a year’s supply of chewing tobacco would be “available” to all, but which in fact would be targeted to and have appeal to a much narrower band of customers.

#### **D. Commission Action**

Almost all of the promotions are substantially underway and have been for some time. Only the May 26, 1996 through June 30, 1996 portion of Option 4 (see table above) is in a state of suspension until May 26, 1996.

Because this is a case of the first impression and to avoid customer confusion the Commission will not reach decision, in this instance, regarding the consistency of Options 1, 2, and 3 with the "reasonable distinctions" provisions of Minn. Stat. § 237.626 (1994) and will not interfere with the completion of those promotions<sup>3</sup>. The Commission's discussion of the issues involved with these type of promotions, however, should provide adequate notice to the Company regarding the Commission's views of the factors involved in assessing whether a promotion is based on "reasonable distinctions" among customers as required by the statute.

With respect to the suspended portion of the Option 4 promotion, however, the Commission will ask the Company not to restart that promotion. There is nothing on the record to establish the reasonableness of singling out for benefit the customer group for which the disc “Outrageous” would have appeal. Therefore, the Commission concludes that the promotion is not based on reasonable distinctions among customers as required by Minn. Stat. § 237.626 (1994) and will enjoin its recommencement.

### **ORDER**

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<sup>3</sup> However, with respect to future promotions, the Company should be on notice regarding the Commission’s views of compliance with the “reasonable distinctions” requirement of the statute with respect to premium based promotions.

1. Continued operation of three promotions (Options 1, 2, and 3) proposed by U S WEST Communications, Inc. (USWC or the Company) is approved for reasons stated in the text of this Order.
2. The promotion referred to herein as Option 4 is not approved and USWC shall not recommence the promotion of Option 4 for the period May 26, 1996 to June 30, 1996.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

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