

ISSUE DATE: September 28, 1998

DOCKET NO. P-421/AR-97-1544

ORDER MODIFYING USWC'S ALTERNATIVE REGULATION PLAN

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Edward A. Garvey	Chair
Joel Jacobs	Commissioner
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In the Matter of a Petition by US WEST  
Communications, Inc. Requesting Approval of  
an Alternative Regulation Plan

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## **PROCEDURAL HISTORY**

On October 21, 1997, US WEST Communications, Inc. (USWC, U S WEST or the Company) filed a proposed alternative regulation plan pursuant to Minn. Stat. §§ 237.76 through 237.775. Minn. Stat. § 237.764 provides that the Commission must issue its decision within six months of the filing unless the Commission and the applicant agree to an extension.

On November 13, 1997, the Commission met to establish procedures for the consideration of USWC's proposed plan.

On November 25, 1997, the Commission issued a NOTICE OF FILING, AND ORDER ESTABLISHING PROCEDURES AND CONVENING SETTLEMENT CONFERENCE. This Order provided interested persons 20 days to challenge the adequacy or completeness of USWC's October 27 filing.

On December 15, 1997, the Minnesota Department of Public Service (the Department) and AT&T Communications of the Midwest (AT&T) filed comments on the completeness and adequacy of the filing.

On December 26, 1997, USWC filed a reply to these comments. USWC responded that its Plan filing more than substantially complied with the applicable statutory filing criteria and that consideration of the Plan should go forward. It argued that concerns raised by the Department and AT&T are matters that were being addressed in the ongoing settlement discussions and should be included in comments on the Plan.

From January 5 through 13, 1998, the Commission held public hearings in Minneapolis (January 5), St. Paul (January 5), Duluth (January 6), Sauk Rapids (January 7), Marshall (January 8), Rochester (January 9) and Moorhead (January 13). An Administrative Law Judge from the Office of Administrative Hearings conducted the meetings and reported his findings to the Commission on February 2.

On February 11, 1998, the Commission issued its ORDER EXTENDING DEADLINES AND ACCEPTING FILING AS TO FORM. On February 19 and March 24, the Commission again issued orders granting the requests of the parties to extend the date for issuing its decision.

On March 31, 1998, parties submitted lists of unresolved issues in this case.

On April 22-23, 1998, parties filed initial comments.

On May 22, 1998, parties filed reply comments.

On May 29-June 1, 1998, parties filed responsive comments.

On June 29, 1998, the Department filed an "amended plan" reflecting a settlement of differences with USWC. The filing of this settlement had the effect of triggering a 60-day period for Commission action, pursuant to Minnesota Statutes § 237.764, subdivision 1(f).

On July 1, 1998, the Commission met to consider the amended plan, and requested additional comments.

On July 21, 1998, parties filed additional comments.

On July 30-31, 1998, parties filed reply comments. In particular, the Department and USWC filed another amended plan,<sup>1</sup> which they said reflected a settlement of differences among AT&T, the Department, the Minnesota Business Utility Users Council (MBUUC), Sprint Communications (Sprint), the Suburban Rate Authority (SRA) and USWC. The filing of this settlement had the effect of re-starting the 60-day period for Commission action, pursuant to Minn. Stat. § 237.764, subd. 1(f).

On August 14, USWC filed a document which it said should amend the July 30 comments it filed with the Department, and to amend the AFOR Plan.

On August 19, 1998, parties filed additional comments. In particular, USWC filed a stipulation agreement documenting the settlement of differences among AT&T, the Department, MBUUC, Sprint, SRA and USWC as of July 30, 1998.

On August 21, SRA filed an August 19 letter addressed to USWC which it said should amend the July 30 AFOR Plan.

By letter dated September 3, 1998, MCI agreed to be bound by the access charge flow-through provisions of USWC's July 30 agreement. MCI also agreed not to contest the agreement at the Commission's September 8 meeting.

The matter again came before the Commission on September 8, 9 and 21, 1998.

## **FINDINGS AND CONCLUSIONS**

### **I. Substantive Requirements for Alternative Regulation Plans**

Alternative regulation plans are intended to capture the benefits of emerging competition among local exchange companies. These plans replace rate-of-return regulation with more flexible pricing procedures.

Telephone companies operating under alternative regulation must classify all their services as "price-regulated," "flexibly priced," or "non-price-regulated." They may raise or lower rates for all but price-regulated services with minimal regulatory oversight. They may not raise rates for price-regulated services during the first three years of the plan and may raise them thereafter only under conditions detailed in the plan. They may not reduce rates for price-regulated services below total service long-run incremental cost (TSLRIC) at any time.

In return for increased pricing flexibility, telephone companies operating under alternative regulation must unbundle their intrastate services and facilities and permit interconnection with local competitors to the same extent that the Federal Communications Commission (FCC) requires unbundling and interconnection for interstate purposes.

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<sup>1</sup>Unless otherwise indicated, further references to USWC's AFOR Plan refer to the amended plan filed on July 30, 1998.

To qualify for alternative regulation, a company must demonstrate that its rates and rate design are appropriate in light of the proposed plan.

The company must also have a Commission-approved service quality plan or settlement for retail customers, or demonstrate that the company is in substantial compliance with Commission quality of service rules. Minn. Stat. § 237.765(a). Additionally, the company must make a commitment to invest in infrastructure improvements and report on its plans to deploy advanced technology, including fiber-optic and broad-band capabilities, during the life of the plan. Minn. Stat. § 237.761, subd. 8.

## **II. Procedural Guidelines**

The statute mandates settlement discussions, requires broad public notice, encourages public input, and directs appropriate discovery. Minn. Stat. § 237.764. In short, it lays procedural foundations, expecting the Commission to complete the process of constructing workable procedures for examining proposed plans within a relatively short time. To assure fulfillment of these requirements, the Commission issued an Order on November 25, 1997 specifying public notice, scheduling seven public meetings, establishing discovery procedures, and convening a settlement conference.

The statute exempts proposed plans from the normal contested case process and requires the Commission to act on proposed alternative regulation plans within six months, unless the Commission and the petitioning company agree to an extension and/or unless, as in this case, the parties submit a settlement. When a settlement is submitted, the Commission must accept, reject, or modify the proposed settlement within 60 days from the date it was submitted.

USWC requested extensions on January 16, February 12, and March 13, 1998, and filed proposed settlements on June 29 and July 30, 1998. The 60 day period for the Commission to accept, reject or modify this settlement ends on September 28, 1998.

## **III. Commission Analysis: the Sufficiency of the July 30 Settlement**

Submission of a settlement, even if it were endorsed by all parties to this matter, would not make approval of USWC's AFOR Plan automatic. The settlement regarding the Company's AFOR Plan serves, in effect, as a joint recommendation by the endorsing parties that the Company's proposed AFOR Plan meets all the statutory requirements and, hence, should be approved. By statute, however, the Commission is required to review settlements regarding proposed AFOR plans and decide whether it will accept, reject, or modify them.

Accordingly, the Commission has reviewed USWC's proposed AFOR Plan in light of the requirements of Minn. Stat. §§ 237.76 through 237.774. In this Order, the Commission makes findings of fact and conclusions concerning the appropriateness of the proposed initial rates and proposed plan, pursuant to Minn. Stat. § 237.764, subd. 1(e). Particular statutory requirements meriting comment and findings are as follows:

### **A. Public Meetings**

Minn. Stat. § 237.764, subd. 1 (a) requires the Commission to conduct as many public meetings on the proposed AFOR as the Commission deems necessary. In its November 25, 1997 Order in this matter, the Commission scheduled seven public meetings in USWC's service area: Minneapolis

(January 5), St. Paul (January 5), Duluth (January 6), Sauk Rapids (January 7), Marshall (January 8), Rochester (January 9) and Moorhead (January 13). An Administrative Law Judge from the Office of Administrative Hearings conducted the meetings and reported his findings to the Commission on February 2, 1998.

## **B. Notice**

Minn. Stat. § 237.764, subd. 1 (b) requires that the company provide notice of the proposed plan to its customers, along with a summary description of the plan provisions and the dates, times, and locations of the public meetings scheduled by the Commission. The Commission finds that USWC has done so. See USWC's Compliance Filing Regarding Newspapers in Which Notice of Public Hearings Will be Published, List of City Clerks and City Administrators USWC Plans to Notify, and Service List for USWC Incentive Plan Filing (December 9, 1997).

## **C. Ratepayer Benefit**

Minn. Stat. § 237.764, subd. 1 (c) requires that the company's AFOR petition explain how ratepayers will benefit from the plan. The Commission finds that USWC's plan contains such an explanation and, more important, finds that the Company's explanation is persuasive for reasons detailed in subsequent sections regarding such items as the three-year freeze on rate increases, investment commitments, quality of service commitments, and greater regulatory flexibility to facilitate 1) introduction of new services and 2) changes to existing services for customers.

## **D. Appropriate Earnings Levels and Rates**

Minn. Stat. § 237.764, subd. 1 (c) also requires that the applying company justify the appropriateness of its earnings levels and rates in light of the proposed plan. Among other things, the statute provides that at the time of filing a plan, the earnings level of a telephone company with more than 1,000,000 access lines in Minnesota shall be deemed reasonable. USWC claims to serve more than 1,000,000 access lines, and no party has contested this assertion.

Nevertheless, the parties to the AFOR Plan agreed that USWC should reduce its price-regulated services, on the effective date of the plan and thereafter, by approximately \$67.9 million per year by the third year of the AFOR Plan, or by an aggregate \$294.5 million over five years. The rates reduced in this plan are as follows:

- reduction in residential flat rate single party service (1FR) of \$0.77 per month in the Minneapolis/St. Paul Metropolitan Exchange, reducing USWC's revenues by \$8.7 million per year. AFOR Plan IV.D.4.c. at 14; Appendix D at 4.
- reduction in toll blocking non-recurring charge from \$27.50 to \$5.00 for business and residential customers. AFOR Plan IV.D.4.c. at 14-15.
- reduction in CustomNet non-recurring charge from \$30.00 to \$5.00 for residential customers, and from \$30.00 to the cost of providing the service as determined by USWC's cost studies for business customers. AFOR Plan IV.D.4.c. at 14-15.
- reduction in Extended Area Service rates for business and residential customers in certain exchanges, reducing USWC's revenues by \$1.9 million per year. AFOR Plan IV.D.4.c. at 14-15; Appendix D at 2.

- reduction for law enforcement trap and trace/pen register services by 50 percent. AFOR Plan IV.D.4.c. at 15; Appendix D at 4.
- reduction in business line rates in the Minneapolis/St. Paul Metropolitan Exchange of between \$2.40 and \$3.00 as provided in USWC's Exchange and Network Services Tariff 5.1.3.B.2, reducing USWC's revenues by \$ 12.2 million per year. AFOR Plan IV.D.4.c. at 15; Appendix D at 3.
- reduction in the composite rate of Carrier Common Line element of switched access to \$0.021064 initially, reducing revenues by \$15 million; a further rate reduction to \$0.014021 by the end of the plan's first year, reducing revenues by an additional \$15 million; a further rate reduction to \$0.006977 by the end of the plan's second year, reducing revenues by an additional \$15 million. AFOR Plan IV.D.4.c. at 12; Appendix D at 1.

USWC also agreed to miscellaneous other adjustments which may have the effect of reducing earnings. For example, USWC agrees to eliminate residential customer responsibility under its Land Development Tariff. AFOR Plan IV.D.4.c. at 15.

Finally, in conjunction with the AFOR plan's access rate reductions, AT&T, MCI and Sprint agree to flow-through the intrastate access rate reductions resulting from this plan. AFOR Plan IV.D.4.c. at 12; September 3 Letter of MCI; September 9 oral comments of MCI.

As part of negotiating this agreement with AT&T, however, USWC agreed to incorporate into this AFOR Plan a pledge to withdraw from an access charge complaint case, Docket No. P-442/C-97-121, that USWC initiated against AT&T. Since that case began, however, other parties have joined. During oral arguments, there was some dispute about the consequences of USWC's withdrawal on the other parties to that case. Rather than attempt to resolve that issue in the present docket, the Commission will simply have USWC's pledge removed from the AFOR Plan. This Commission action should not be construed as reflecting the Commission's opinion about such withdrawal. The Commission is simply bifurcating one complicating issue from the current docket, which has sufficient complications already.

OAG-RUD filed comments supporting the general earnings level of this AFOR Plan relative to the anticipated outcome of the other alternative, a rate case. Initial Comments of the OAG-RUD (April 22, 1998); Initial Comments of the OAG-RUD on the Proposed Settlement (July 21, 1998).

**Commission Finding:** The Commission finds that the Company's approach complies with the statute. USWC serves more than 1,000,000 access lines, and therefore its earnings level is deemed to be reasonable. However, the Commission regards the fact that USWC has agreed to a lower earnings level, and that the OAG-RUD analysis supports this earnings level, as powerful evidence that the lower earnings level is also reasonable. To the extent that the earnings level is reasonable, the Commission finds that the rates proposed under this AFOR Plan are also reasonable, as specifically required by Minn. Stat. § 237.764, subd. 1(c).

#### **E. Appropriate Classification of Services**

Minn. Stat. § 237.761, subd. 1 states that an alternative regulation plan must classify all the

Company's telephone services in three categories: price regulated, flexibly priced, or non-price regulated, as these categories are defined in subdivisions 2 to 5 of the statute. USWC and the parties to the settlement have agreed upon the classification of USWC's services as listed on Appendix A of the Company's AFOR Plan. Appendix A of the Company's AFOR Plan is attached to this Order.

### **1. Price-Regulated Services**

USWC's list of price-regulated services includes the services that are specifically included as price-regulated services in Minn. Stat. § 237.761, subd. 3, such as the flat, and measured local rates, service connection charges and switched access services. All services included in the Plan's price-regulated list are either services specified in Minn. Stat. § 237.761, subd. 3 or services that meet the requirements of Minn. Stat. § 237.761, subd. 2.

### **2. Non-Price-Regulated Services**

USWC's AFOR Plan identifies two categories of non-price-regulated services, labeled A and B.<sup>2</sup> The Commission or any party may object to a price increase to Category A services on the ground that the proposed increase would impede the development of fair and reasonable competition or result in substantial harm to as to warrant Commission intervention. AFOR Plan IV.G.3; see also discussion of Appropriate Procedures for Rate Changes, and of Competitive Enforcement, below. This category contains:

- Private line/data/special access services:
  - Self-Healing Network Services (SHNS)
  - Synchronous Service Transport
  - Order Option, Modifications, Miscellaneous Charges for the above services
- Megabit services:
  - MegaCentral
  - MegaSubscriber

In contrast, changes to Category B services are not subject to approval or investigation by the Commission except as provided in Minn. Stat. §§ 237.761, subd. 6; 237.762, subd. 6; 237.770, and 237.771. AFOR Plan IV.G.3. This category contains:

- Voice messaging:
  - Voice Messaging Services
  - Messaging Waiting Indication
  - Miscellaneous Business Voice Messaging Features
- Wholesale billing and collection services, except for Recording and Selective Carrier Denial.
- Speed Calling

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<sup>2</sup> Without an AFOR Plan, USWC's regulated telephone services are classified as either noncompetitive or emergingly competitive. The Commission has not determined that any of USWC's services are classified as effectively competitive. Similar to the classifications under the AFOR Plan, the emergingly competitive services, as listed under Minn. Stat. § 237.59, subd. 1, are subject to lessened regulation.

- Toll services
  - Operator Services
  - Message Telecommunications Services (MTS)
  - Wide Area Telecommunications Services (WATS)

For each service included in the non-price-regulated service list, the AFOR Plan included supporting evidence that each specific service meets the factors listed in Minn. Stat. § 237.761, subd 5.

For example, regarding wholesale billing and collections, USWC stated that the ability to provide billing and collection services is not unique to USWC or to other LECs, that there is no aspect of billing and collection that cannot be self-provided or obtained from other sources and that there are minimal barriers to entry in the provision of these services. Further, USWC noted that billing and collections services are currently classified as emergingly competitive under Minn. Stat. § 237.59, subd. 1(3) and have been provided under negotiated contracts in the past. In 1987, the Company noted, the Commission expressly held that the billing and collection process should be determined by negotiation.<sup>3</sup> The Company argued that 1) in effect, these services have not been price-regulated for many years, 2) acknowledging this long-standing practice by classifying these services as non-price-regulated would have no adverse impact on competition, and 3) the provisions of Minn. Stat. §§ 237.762, subd. 6, 237.770, and 237.771 are sufficient to protect the public interest.

### 3. Flexibly Priced Services

Services not listed as price-regulated and not otherwise determined to be non-price-regulated are classified as flexibly priced. USWC listed such services on pages 3 and 4 of Appendix A of USWC's AFOR Plan, which is attached to this Order. These services are also divided into categories A and B. The only difference between the two categories is that USWC commits to not raising the services in Category A — residential and basic business call waiting, and local directory assistance — during the first 3 years of the AFOR Plan.

**Commission Finding:** The Commission has reviewed the Company's service classifications and finds that they comport with applicable statutory definitions provided in Minn. Stat. § 237.761, subd. 2-5.

### F. Reclassification of Services

Minn. Stat. § 237.761, subd. 6 provides that an AFOR plan may contain provisions allowing for reclassification of services during the course of the plan. The statute requires that any such reclassification shall occur only upon a showing that the service meets the criteria contained in subd. 2-5 and the plan itself.

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<sup>3</sup>In the Matter of a Summary Investigation into IntraLATA Toll Access Competition, Docket No. P-999/CI-85-582, ORDER (November 2, 1987).

USWC's AFOR Plan proposes a process whereby the Commission or any party may initiate the reclassification. If unopposed, the reclassification would occur within 60 days. If opposed, USWC could request an expedited proceeding, and the Commission would issue its decision within six months.

Under the proposed language, the Commission would have the power to initiate a reclassification. However, by the terms of the AFOR Plan, the Commission would be powerless to influence the implementation of a reclassification initiated by others unless some third party files comments in opposition. The Commission has previously found such an arrangement unacceptable.<sup>4</sup>

While the Commission holds the Department of Public Service and the Office of Attorney General in high esteem, it cannot delegate to these or other third parties the Commission's own responsibilities to maintain just and reasonable rates, encourage fair and reasonable competition, and ensure consumer protections during the transition to a competitive market. Minn. Stat. § 237.011(2), (4) and (7). Therefore, as a condition of granting an AFOR, the Commission requires the power to suspend reclassification petitions on its own motion to permit time for further Commission action.

**Commission Finding:** USWC's proposal is appropriate, but incomplete. By its own terms it complies with statutory requirements (Minn. Stat. § 237.761, subs. 2-5). However, it leaves the Commission's ability to influence a reclassification in the hands of third parties. By approving this language, the Commission would effectively abdicate its statutory responsibilities. The Commission will decline to do this. Instead, the Commission will modify the language of the AFOR Plan to provide that the Commission may suspend a reclassification petition on its own motion.

### **G. Adequate Investment Commitments**

Minn. Stat. § 237.761, subd. 8 requires that an alternative regulation plan must outline the Company's commitment to invest in telecommunications infrastructure improvements in this state over a period of not less than six years.

In the AFOR Plan's proprietary Appendix C and the non-proprietary supplement thereto, USWC discusses its plans for maintaining and improving infrastructure; providing higher-speed, higher-capacity technology; serving Minnesota's public institutions; and enabling competition in the state. USWC divides its expenditures into four categories: 1) preserving and rehabilitating the existing network, 2) building the infrastructure to accommodate growth, 3) enhancing the network to permit the provision of new products and services, and 4) rearranging and expanding the network to enable competition.

Regarding the maintenance of the existing network, USWC described the size of its current network and the percentage of its customer base that currently has access to certain services, such

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<sup>4</sup>In the Matter of a Petition by Frontier Communications of Minnesota, Inc. Requesting Adoption of an Alternative Regulation Plan, ORDER APPROVING FRONTIER'S ALTERNATIVE REGULATION PLAN (August 16, 1996) at 19 (emphasizing that "the Company acknowledged that ... the Plan does not interfere with the Commission's authority to investigate a service reclassification on its own motion.").

as Customer Local Area Signaling Service (CLASS),<sup>5</sup> voice messaging, frame relay, and ISDN. In particular, USWC noted that it made ISDN available to 84% of its customers, both within the Minneapolis/St. Paul Metropolitan Exchange and beyond. USWC also described the types of investment in primary and backup systems necessary to maintain, preserve and rehabilitate the network. USWC also gave an account of the time and money needed to cope with crises or natural disasters.

Regarding measures taken to accommodate growth, USWC noted the accelerating growth in access lines in recent years, and its impact on capital and expense dollars, especially regarding switching; outside plant, including the feeder and distribution network; and interoffice facilities.

Regarding network enhancements to permit the provision of new products and services, USWC noted the following:

- USWC will upgrade switches in the Minneapolis/St. Paul metropolitan area to enhance reliability, accelerate call processing times, provide local number portability, and provide higher-speed digital data services. USWC noted that two upgrades had been completed in early 1998, two were in progress, and 12 more were planned for 1999-2003.
- USWC may establish a separate Asynchronous Transfer Mode (ATM) network for data traffic loads, to handle the growing Internet data traffic. This would result in higher bandwidth for Internet service providers (ISPs), while relieving congestion on the local voice network.
- USWC will provide CLASS service capability to all Minnesota wire centers. USWC provided CLASS services to 85% of its Minnesota customers at the time it initiated this AFOR proceeding; as of July 30, 1998 that number was 93%. USWC committed to deploy CLASS in the majority of the remaining wire centers by year end 1999, and to all wire centers by the end of the AFOR Plan's term.
- USWC plans network management and performance monitoring improvements, including additional bi-directional transport rings in the Minneapolis/St. Paul area.
- USWC plans to deploy Advanced Intelligent Network (AIN) throughout the next five years on a selected basis. AIN is a package of highly-automated, customer-activated services that work through most switches and can be rapidly deployed to meet market demand.
- USWC plans to expand the availability of various high-speed data transport services based upon competition and demand.
- USWC introduced Megabit Service, the first of its digital subscriber line (DSL)

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<sup>5</sup>CLASS is a group of features that use USWC's Signaling System 7 (SS7) network, rather than its voice network, to forward line- and call-specific information between central offices on interoffice calls. It includes Caller ID (including Calling Name), Call Waiting ID, Continuous Redial, Last Call Return, Selective Call Forwarding, Priority Call, Call Rejection, Call Trace and Anonymous Call Rejection.

technologies,<sup>6</sup> in 1998, and is planning a second implementation phase later this year. USWC expects these services to appeal to businesses, residences, schools, libraries and healthcare providers.

- USWC will make available local dial-up access to an Internet service provider (ISP) in all exchanges within the AFOR Plan's first year.

USWC listed a number of programs and grants it has initiated to provide training and technology opportunities, primarily in education. It also described Community of Interest Networks (COIN) projects, in which USWC and a local community have jointly determined which technologies the community needs deployed and developed a plan for that deployment.

Regarding the rearrangement and expansion of USWC's network to enable competition, USWC summarized the expenditures it has incurred as a result of the federal Telecommunications Act of 1996, especially in the areas of systems, network rearrangements, and process changes.

USWC listed various interconnection and resale products and services it is offering. USWC notes that interconnection requires USWC to modify or develop a number of systems, especially service assurance, service delivery, capacity provisioning, and billing. In addition, interconnection requires spending for design, testing, system coding, and the purchase of equipment to process and store data. Other interconnection or government-mandated expenditures include the following:

- As more calls are completed between customers with different local phone companies, fewer calls can be handled entirely at the end office. As a result, USWC will need to expand its facilities for tandem switching, transport trunks, and local switch/equipment upgrades.
- USWC must add or expand business and service offices, and change their processes, to accommodate changes in order-taking, billing and collection, provisioning, and other service delivery processes.
- Implementation of local number portability within the FCC's timetable will require switch upgrades and software/system changes.
- Implementation of area code changes will require system modifications and software changes.

USWC notes the difficulty of providing a more detailed plan of future investments. Changes in technology, competitive conditions and customer demands make long-term projections speculative. USWC notes that the AFOR statutes do not require it to make additional investment that it would not have made in the absence of an AFOR plan, and that doing so would be uneconomic if demand were insufficient. Nevertheless, USWC was willing to make the following commitments:

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<sup>6</sup>DSL technologies provide high-speed transport services using basic copper loops to produce high-speed, secure local area network (LAN) access and Internet access. Downstream speeds range from 192 Kbps to 6 Mbps, depending in part upon the distance from the central office.

- USWC would conduct market trials of 1.5 Mdps technology in three exchanges outside of the Minneapolis/St. Paul Metropolitan Exchange.
- Within the AFOR Plan's first year, USWC will make local dial-up access to an Internet service provider (ISP) available in all USWC exchanges.
- By 1999, USWC will replace the Minneapolis Fernbrook and Normandale central office switches with advanced switches.
- By the end of 1999, no more than 20 USWC wire centers will lack CLASS capabilities.
- By the end of 2003, USWC will have replaced all the old 1AESS switches in the Minneapolis/St. Paul Metropolitan Exchange.
- By the expiration of the AFOR Plan, USWC will provide CLASS capabilities throughout its Minnesota service area.

Additionally, USWC agrees to conduct a written survey and begin a customer awareness and education program to see if sufficient demand for advanced services can be found or developed.

**Commission Finding:** USWC is the first telephone company to initiate an AFOR proceeding under Minn. Stat. §§ 237.76 through 237.774 since the passage of the Telecommunications Act of 1996. This fact is reflected in USWC's investment commitments. USWC says that it is responding to competitive pressures by offering some of the most advanced telecommunications services in the state. At the same time, USWC says that it is responding to competitive pressures by keeping long-term plans flexible. As a result, USWC's AFOR plan contains much proprietary discussion of planned technological upgrades, but relatively few actual commitments. This is what the Commission would expect of a company entering competition.

The Commission finds that USWC's investment commitments satisfy the requirements of the AFOR statute. Adding credibility to the Company's plan, USWC's previously promised network facility upgrades appear to be on track.

#### **H. Appropriate Rates for New Services**

Minn. Stat. § 237.762, subd. 2 requires that rates for new services must equal or exceed their Total Service Long Run Incremental Cost (TSLRIC). USWC is not introducing any new services at present.<sup>7</sup> New services offered during the term of this AFOR Plan will need to comply with this statutory requirement.

#### **I. Appropriate Procedures for Rate Changes**

With few exceptions, Minn. Stat. § 237.762, subd. 3(a) proscribes raising rates above initial rates for the first three years of an AFOR plan. After the first three years, the statute allows for certain rate increases if the company, using a procedure set forth in an approved AFOR Plan, convinces

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<sup>7</sup>However, USWC has re-characterized its Digital Subscriber Line (DSL) Service as two distinct "Services": MegaCentral and MegaSubscriber. In the Matter of USWC's Megabit Service Offering, P-421/EM-98-471.

the Commission that it has substantially complied with the service quality standards set forth in the plan and that the change is otherwise appropriate.

## 1. Tariff Changes for Price-Regulated Services

The AFOR Plan has intricate provisions governing rate changes for price-regulated services. Generally, they are as follows:

Consistent with statute, the AFOR Plan proscribes reducing price-regulated rates below TSLRIC. It also proscribes increasing a price above its Initial Price.<sup>8</sup> AFOR Plan Section IV.E.1.

For price changes between the service's TSLRIC and its Initial Price, USWC must give affected customers 30 days notice of a price change. Such a rate change becomes effective automatically if not suspended. The Commission may suspend the price change if, before USWC implements the new price, the Commission finds good cause to suspect that the new price is outside the authorized range, or is discriminatory. After suspension, the Commission must rule on the rate change within 30 days or it becomes effective automatically. AFOR Plan Section IV.G.1.(a).

However, the AFOR Plan provides that USWC may seek a rate increase and any party may seek a rate decrease if, for example,

- as part of an extended area service (EAS) revenue-neutral rate change,
- as part of a revenue-neutral rate change necessary to carry out the purposes of rules adopted pursuant to Minn. Stat. § 237.16,
- related to a universal service program, or
- after the AFOR Plan's first two years, to change prices to reflect changes in taxes, Federal Communications Commission jurisdictional allocations, or plant investment.

The Commission would need to rule on such a proposed rate change within 120 days of the petition, or it would become effective. AFOR Plan Section IV.G.1.(b).

After the AFOR Plan's first three years, USWC may also seek to increase rates to offset the cost of new Commission-imposed access charge reductions, or systemwide rate deaveraging. AFOR Plan Sections IV.E.4.(a), IV.G.1.(d), IV.G.1.(e).

Consistent with Minn. Stat. § 237.762, subd. 5, the AFOR Plan proscribes income-neutral price changes except 1) as necessary to comply with the Commission mandate that extended area service (EAS) be implemented on a revenue-neutral basis, or 2) if approved by the Commission and necessary to carry out the purposes of rules adopted pursuant to Minn. Stat. § 237.16. AFOR

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<sup>8</sup>AFOR Plan Section II.E. provides that —

Initial Price means the tariffed price of a price-regulated service on file with the Commission and in effect on the date of the filing of this Plan [October 21, 1997], or any prices establish by this Plan including the price after any applicable credits or prices that are scheduled to be reduced over a period of time as set forth herein. If a new service is introduced as a price-regulated service subsequent to the filing of this Plan, the Initial Price shall be the tariffed price filed by USWC or finally approved by the Commission, excluding any introductory promotions....

Plan Section IV.E.2. However, any such price increases are conditioned upon USWC complying with service quality standards. AFOR Plan Section IV.G.1.(f).

After the AFOR Plan's first two years, parties may seek to change prices to reflect changes in taxes, Federal Communications Commission jurisdictional allocations, or plant investment, consistent with Minn. Stat. § 237.762, subd. 3(b). AFOR Plan Section IV.E.3. These price increases are conditioned upon USWC complying with service quality standards. AFOR Plan Section IV.E.5.

After the AFOR Plan's first three years, USWC may seek to increase rates to offset new access charge reductions or net losses from financing a universal service fund. AFOR Plan Section IV.E.4. Again, these price increases are conditioned upon USWC complying with service quality standards. AFOR Plan Section IV.E.5.

Regarding universal service programs, the AFOR Plan contemplates USWC seeking to collect universal service surcharges from its customers. During the AFOR Plan's first three years, however, the surcharges would need to be coordinated with a state universal service fund, implemented on an income-neutral basis, and not have the effect of costing customers more than the Initial Price for the service in question. AFOR Plan Section IV.E.2. If, after the AFOR Plan's first two years USWC initiates a rate increase to support a state universal fund, the Commission must decide the case within a year. AFOR Plan Section IV.G.1.(c). USWC has an ongoing duty to flow-through net benefits it receives from universal service funds to customers. AFOR Plan Section IV.E.6.

The AFOR plan also provides for miscellaneous changes to price-regulated services. Tariff language changes can take effect within one day of filing. “[S]ignificant changes in the conditions of service” can take effect 20 days after filing and notifying affected customers. New service plans that bundle rate elements, alter rate element definitions, or cause prices for some elements to rise while others fall, will generally take effect 20 days after filing and notice to affected customers. All other changes take effect 20 days after filing. However, such filings must be served on the Commission, the Department and the Office of Attorney General's Residential and Small Business Utilities Division (OAG-RUD), and any interested party has 30 days in which to comment on any such tariff filings. Thereafter, the Commission has up to 120 days to rule on the proposal. USWC may not increase these prices for price-regulated services unless it is in substantial compliance with applicable service quality standards. AFOR Plan Section IV.G.1.(f).

## **2. Price Changes for Flexibly-Priced and Non-Price-Regulated Services**

In contrast to the preceding, changing the price for flexibly-priced or non-price-regulated services is relatively straightforward.

USWC may decrease the price of flexibly-priced services upon notice to the Commission and customers, and may increase prices with 20 days notice to the Commission and customers. An interested party has 20 days to file an objection. In that case USWC's price change would not take effect until 90 days after the initial filing, unless the Commission approves, rejects or modifies the rate change in the meantime, depending on whether the rate is below the relevant cost floor or violates Minn. Stat. § 237.06. AFOR Plan Section IV.M. USWC may implement the price change pending Commission ruling, subject to refund by USWC. All other terms are governed by Minn. Stat. § 237.60, subd. 2. AFOR Plan Section IV.G.2.

USWC may change the price and terms of non-price-regulated services simply by filing a revised price list with the Commission, the Department and affected customers. Prices for such services are not subject to Commission investigation or approval except as provided by Minn. Stat. §§ 237.761, subd. 6; 237.762, subd. 6; 237.770 and 237.771. Regarding a price increase for Category A non-price-regulated services, however, the Commission or any party may file an objection to a price increase on the grounds that the increase would impede the development of competition or result in substantial customer harm. USWC may implement the price increase pending Commission ruling, with the increase not subject to refund. AFOR Plan Section IV.G.3.

Notwithstanding the foregoing, USWC may not increase the price for residential and basic business call waiting and local directory assistance (including one free call per month) for the AFOR Plan's first three years. Thereafter, USWC may petition the Commission to raise any of these rates, but not by more than 10% in any year. AFOR Plan Section IV.F.2.

**Commission Finding:** The Commission finds that the procedures and standards enunciated in the AFOR Plan for reducing and increasing rates or prices for price-regulated, flexibly priced, and non-price-regulated services are consistent with the statutory requirements of Minn. Stat. § 237.762, subd. 3. However, concern for USWC's service quality compels the Commission to place one more condition on USWC's ability to reduce the price for price-regulated service. This matter will be addressed in the discussion of Findings Required Re: Quality of Service, below.

#### **J. Introduction of New Services**

The AFOR Plan states that USWC will categorize each new service as price-regulated, flexibly price regulated or non-price-regulated, and will provide a rationale for that categorization, as required by Minn. Stat. § 237.761, subd. 7. USWC must not offer a new service categorized as price-regulated until after giving 10 days notice to the Commission, the Department and OPC. In contrast, USWC may offer any other new service with 1 day notice. AFOR Plan IV.C.1.

Interested parties have 30 days in which to object to the classification of a new service, or 10 days to object to other matters. AFOR Plan IV.C.2, 3.

Two aspects of this AFOR provision warrant further attention. First, AFOR Plan IV.C.2., governing objections based on a new service's classification, begins, "If not interested party *or the Commission* objects to USWC's classification...." This language clearly contemplates that the Commission may initiate an investigation of a new services classification. In contrast, AFOR Plan IV.C.3, governing objections to other issues, offers no clarity on this point. To circumvent any impression that the absence of a reference to the Commission implies that the Commission would lack the authority to initiate an investigation of other matters, the Commission will modify this language to expressly provide such authority.

Second, the Commission has concerns about the consequences of permitting a new service to enter the market if, for example, parties allege that it will harm competition. The Commission will address this concern further under the heading of Competitive Enforcement, below.

#### **K. Findings Required Re: Quality of Service**

Minn. Stat. § 237.765(a) establishes service quality requirements for AFOR plans. A telephone company may fulfill the requirements of this section by including in its AFOR plan an existing Commission-approved service quality plan or settlement for retail customers. The Commission

approved a service quality plan for USWC in 1996,<sup>9</sup> and recently approved an extension of that plan.<sup>10</sup> That plan identifies measurable aspects of service quality, sets standards for each aspect, and prescribes consequences for failing to meet the goals, in terms of customer-specific remedies and financial penalties.

Since the time USWC filed its proposed plan in October of 1997, the parties have been negotiating about the terms of this plan. Late in those negotiations -- two weeks after six of the parties had settled on the terms of the AFOR Plan -- the Communications Workers of America called a strike against USWC. On August 21, 1998, USWC informed the Commission that it would withdraw from its service quality commitments due to the added burden that the strike would place on USWC's efforts to meet the terms of the 1996 Service Settlement. This triggered an emergency service quality complaint from the Department and OAG-RUD, who disagreed about the propriety of USWC's actions. When the strike tentatively ended on August 30, the Department, OAG-RUD and USWC entered into a stipulation whereby they agreed to submit language for the Commission's approval specifying how the service quality settlement would operate in the event of a strike. That language was as follows:

In the event of a strike by US WEST employees, including the continuation of the strike commenced by the Communications Workers of America on August 15, 1998, US WEST will continue to provide the customer remedies included in Appendix B, Service Quality Settlement, Sections I.B "Installation Customer Remedies", and Section II.B "Repair Customer Remedies." In the event of a strike by US WEST employees, including the continuation of the strike commenced by the Communications Workers of America on August 15, 1998, US WEST will not be subject to the following Service Quality Settlement penalty provisions: Section I.C "Installation Standards"; Section II.C "Repair Standards", Section III "Service Center Answer Times"; and Section IV "Penalties" until 10 days after the conclusion of the strike.

The Commission finds this language reasonable, and will modify AFOR Plan Appendix B accordingly.

The new service quality plan also contains a great many other changes from the old service quality plan. It specifies performance standards with more precision; reconciles the standards with Commission rules; adds new customer remedies; institutes measurements for the installation and repair of services associated with high-capacity data transmission; gauges the fulfillment of certain standards on a wire center or exchange basis rather than a company-wide basis, thereby promoting high quality service in all exchanges; provides additional incentives for USWC to remedy problems, and provides for reporting on all measurement standards. Regarding this last item, see discussion of Reporting Provisions, below, and this Order's Service Quality Attachment.

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<sup>9</sup>In the Matter of an Investigation into U S WEST Communications, Inc.'s Service Quality, Docket No. P-421/CI-95-648 ORDER ACCEPTING SETTLEMENT WITH MODIFICATIONS (May 2, 1996); ORDER AFTER RECONSIDERATION (June 12, 1996).

<sup>10</sup>In the Complaint of the Department of Public Service Against U S WEST for Failure to Honor its Service Quality Agreement and to Provide Adequate Service to its Customers, Docket No. P-421/C-98-1235 ORDER REJECTING STIPULATION, AND APPROVING MODIFIED AGREEMENT (September 28, 1998).

The adequacy of those incentives remains at issue, however. As the Commission noted in its most recent service quality order, USWC did not achieved the level of quality prescribed in its service quality plan during the plan's first year, and preliminary reports reveal a similar result for the second year.<sup>11</sup> The Commission is left to conclude that either the level of service quality demanded by the Commission is unreasonably high, or that the cost of non-compliance is not sufficiently great to warrant the cost of compliance. During oral argument, USWC denied that the service quality standards were too high. The Commission is left with few other conclusions about the persistence of USWC's service quality issues.

At various points, the AFOR statute makes the competitive flexibility of an AFOR plan contingent upon demonstrations of service quality. In particular, Minn. Stat. § 237.765(a) bars a telephone company from entering into an AFOR plan and obtaining the competitive benefits thereof unless *either* 1) the Company demonstrates substantial compliance with service quality provisions, *or* 2) the Commission is willing to accept the company's pledge of future service quality compliance. Thus far, the Company's pledge of future service quality compliance has proven unreliable. The only other option available on the face of the statute is to withhold approval of the AFOR's competitive flexibility until USWC demonstrates substantial compliance with service quality provisions.

In this trade-off between competition and quality, the Commission will choose both. USWC's service quality, while problematic, is not a sufficient reason to block the next step on the road to competition. The Commission will therefore fashion a middle path. The Commission will not reject the AFOR Plan entirely, but neither will the Commission grant it entirely. Instead, as a condition to granting the AFOR, the Commission will provide that USWC will lack the discretion to reduce the price of price-regulated services until after USWC demonstrates substantial compliance with the service quality agreement. The Commission will accomplish this by adding the following language to the AFOR Plan:

Notwithstanding other provisions of this Plan and its appendices, after the first 270 days of this Plan USWC may not provide any price-regulated service for less than its Initial Price unless 1) USWC has demonstrated substantial compliance with the quality of service standards set forth in the Plan or 2) with the Commission's assent.

Note that this language grants some exceptions. The purpose of the condition would not be enhanced by prohibiting USWC from making the various rate reductions scheduled elsewhere in the AFOR Plan; therefore, the language refers to the services' "Initial Price," a term defined in the AFOR that allows for the contemplated price reductions. Additionally, the Commission will retain the discretion to waive the provision in the face of unforeseen consequences. Finally, in order to provide USWC with some opportunity to improve its service and avoid the imposition of this sanction, the Commission will suspend application of this provision for the first 270 days of the AFOR Plan.

USWC argued that this modification would frustrate its attempts to compete more effectively. Yet the key to unlock the full competitive potential of the AFOR Plan rests with USWC. The Commission and the Company can both look forward to the day when that potential is realized. The Commission will amend the AFOR Plan Appendix B

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<sup>11</sup>*Id.*

“Service Quality Settlement” as described above.

**Commission Finding:** The Commission finds that the Service Quality Settlement presented under USWC’s AFOR Plan, as modified above, is a comprehensive service quality tool that merits Commission approval. The Settlement includes reasonable and clear objectives that are superior to existing objectives. In sum, USWC’s modified AFOR Plan meets the quality of service requirements of Minn. Stat. § 237.765.

#### **L. Appropriate Procedures for Discontinuance of Service**

Minn. Stat. § 237.767 provides that an AFOR regulated company may not discontinue a service or basic network function that has been classified as price-regulated or flexibly priced without the express approval of the Commission.

The AFOR Plan grants USWC the discretion to discontinue Category B non-price-regulated services or service packages at will upon 30 days notice to the Commission and affected customers. AFOR Plan IV.L.3.

Regarding any other service, USWC may request to discontinue it — whether on a partial, regional or class-specific basis — with 60 days notice to the Commission and affected customers. If no one objects, USWC may discontinue the service at the end of the notice period. If contested, USWC may not discontinue the service until 120 days after the request, unless the Commission rules first. AFOR Plan Section IV.M. In addition to the forgoing, the discontinuation of toll service is governed by Minn. Stat. § 237.74. AFOR Plan IV.L.1., 2.

No party opposed these provisions.

**Commission Finding:** The Commission finds that the procedures and standards enunciated in the AFOR Plan for discontinuance of service are consistent with the statutory requirements of Minn. Stat. § 237.767.

#### **M. Deaveraging Provisions**

Minn. Stat. § 237.771 requires that rates under an AFOR Plan must be the same in all geographic locations except for good cause.

The AFOR Plan permits USWC to seek to reduce rates in targeted areas to respond to competition, provided that USWC does not seek to recover the foregone revenues through offsetting rate increases. AFOR Plan Section IV.K.1. The request would be deemed granted unless the Commission rules otherwise within 90 days. AFOR Plan Section IV.M.

If the Commission orders the income-neutral deaveraging of USWC’s retail rates, USWC may seek to increase the price of price-regulated services. If this occurs within the AFOR Plan’s first three years, that increase must be coordinated with the implementation of a state universal service fund such that ratepayers do not pay more for the price-regulated services than the Initial Price. If Commission- or legislatively-mandated retail deaveraging is in effect after the first three years, USWC may seek a price increase in price-regulated services even if it results in customers paying more than the Initial Price for the services. AFOR Plan Section IV.K.2. The rates would be deemed effective unless the Commission rules otherwise within 8 months. AFOR Plan Section IV.M.

Finally, the AFOR Plan permits USWC to seek to pass through local taxes, franchise fees or special surcharges to the customers in the jurisdiction imposing the charges. AFOR Plan Section IV.K.3.

The American Association of Retired Persons (AARP) objects to the AFOR Plan providing for deaveraging, noting that the federal Telecommunications Act of 1996 requires that rates in urban and rural areas be “reasonably comparable.” While mindful of this obligation, the Commission cannot conclude today that they preclude all opportunities for rate deaveraging. The Commission acknowledges that both federal and state statutes favor uniform rates: the federal law speaks of rural and urban rates being “reasonably comparable”, while state statute requires uniform rates except for “good cause.” The Commission will interpret and apply these provisions as specific factual circumstances arise. The pricing flexibility reflected in the AFOR Plan will be subject to both statutory requirements.

**Commission Finding:** The AFOR Plan’s approach to deaveraged rates is thorough and consistent with Minn. Stat. § 237.771, *i.e.*, the duty to show good cause and obtain Commission approval prior to implementing any proposed deaveraged rates.

#### **N. Competitive Enforcement**

As noted elsewhere in this Order, the legislature has charged the Commission with the duty of maintaining just and reasonable rates, and encouraging fair and reasonable competition for local exchange telephone service. Minn. Stat. § 237.011. More specifically, Minn. Stat. § 237.76 states that one of the purposes of an AFOR plan is to facilitate the development of telecommunications alternatives for customers. The demands of the emergingly competitive local telephone market have impressed upon the Commission the need for prompt responses to competitively-sensitive issues. The traditional remedy is to launch an investigation that may culminate in a rate refund months or years later. This remedy has little relevance in quickly-developing markets. When a competitor complains of anticompetitive conduct, a Commission decision to launch a 6-month investigation may have the same effect as a decision dismissing the complaint outright.

The Commission’s ability to sanction willful anticompetitive conduct is impeded by the administrative structure of its penalty authority. While Minn. Stat. § 237.461 appears to grant the Commission broad authority to enforce its rules and orders through criminal, civil and equitable remedies, in practice the Commission’s penalty authority ends when it finds an intentional violation. The Commission must then refer civil actions to the Attorney General to be enforced in court.

Even when the Commission is able to retroactively punish anticompetitive conduct, that power may be insufficient to encourage fair and reasonable competition in the present. The Commission has little authority to undo a customer’s choice, even if that choice was influenced by the vendor’s wrongful conduct. Quite simply, the Commission cannot un-ring the bell. In this fluid landscape, often the Commission’s only effective remedy is to suspend allegedly wrongful conduct while it is occurring.

The Commission uses the term “allegedly harmful” advisedly. It knows that irreparable harm can result from suspending conduct as well as from permitting it. While there is no perfect solution, the Commission’s best tool for promoting and maintaining an environment conducive to competition is to provide a forum where allegations of anticompetitive conduct can be raised and resolved swiftly and surely.

For the forgoing reasons, the Commission will modify the AFOR plan by adding a new Section VIII. “Competitive Enforcement”, as follows:

A. Expedited Proceeding. USWC agrees to the use of an expedited proceeding under Minn. Stat. § 237.61 in lieu of a contested case to develop an evidentiary record in any proceeding covered by this section that involves contested issues of material fact.

B. Tariff Suspension. The Commission may, within 90 days after the effective date of a USWC tariff, suspend the tariff in a proceeding covered by this section if, based on the standards applied by Minnesota courts for granting temporary injunctions, the Commission finds a suspension appropriate.

C. Penalties. In lieu of referral by the Commission to the Attorney General to seek penalties under Minn. Stat. § 237.461, the Commission shall require USWC to pay penalties of between \$100 and \$5000 for each day of each knowing and intentional violation.

Part A. provides for expedited proceedings pursuant to Minn. Stat. § 237.61. This statute permits the Commission to, among other things, avoid referring matters to the Office of Administrative Hearings for litigation. This saves time, and helps ensure that competitively-sensitive issues are not resolved by default in favor of the party that benefits from delay.

Part B. provides the Commission with the authority to suspend a tariff within the first 90 days of its taking effect, under circumstances that would persuade a court to grant a temporary injunction. That is, the Commission would consider 1) the nature and background of the relationship between the parties, 2) the harm to be suffered if the temporary restraint were denied, 3) the likelihood that one party will prevail on the merits, 4) administrative concerns involved in supervising and enforcing a temporary decree, and 5) public policy considerations expressed in statutes which may or must be addressed as an aspect of the particular fact situation. This standard appears elsewhere in telecommunications law to govern time-sensitive competitive disputes.<sup>12</sup>

While parts A. and B. make the Commission’s action swift, part C. makes that action sure. Currently the Commission lacks the power to assess penalties for intentionally anticompetitive conduct. Rather, the Commission merely makes findings on intentional misconduct, and then refers the matter to the Office of the Attorney General, which then must ask a court to assess and impose penalties under Minn. Stat. § 237.461. Part C basically takes the language of that statute and applies it to USWC and the Commission specifically, thereby foregoing litigation in court.

USWC raises a number of arguments against the penalty provision.

USWC claims that this language would deprive it of the opportunity to contest the Commission’s findings de novo in court. However, it was not obvious to the OAG-RUD that a court would take de novo review of a matter litigated and decided at a state agency. The idea likewise strikes the Commission as counter-intuitive. In the absence of clearer reasoning or authority, the Commission must at this time decline to accept USWC’s assertion as fact.

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<sup>12</sup>See, for example, Minn. Rules, part 7811.2100, subp. 9; Minn. Rules, part 7812.2100, subp. 9 (regarding suspensions and modifications of interconnection agreements).

USWC argues that, on principle, it would be unfair to subject USWC to these penalty provisions while USWC's competitors are not subject to similar provisions. The Commission is unpersuaded. The Commission cannot help but note that some of the very statutes that govern the current docket benefit USWC, and only USWC.<sup>13</sup> USWC also fails to articulate why it felt free to enter into a service quality agreement containing penalty provisions that did not apply to other telephone companies. In any event, the Commission does not accept the premise of this objection. USWC's competitors *are* subject to similar penalty provisions to the provisions under discussion; those provisions are found in Minn. Stat. § 237.461.

USWC suggests that it is inappropriate for the Commission to seek penalty provisions that were not prescribed by statute, and were affirmatively granted elsewhere. But again, USWC fails to articulate why it did not feel it inappropriate to enter into a service quality agreement whereby the Commission may impose financial penalties without resort to Minn. Stat. § 237.461.

## **O. Reporting Provisions**

### **1. Annual Financial Reports**

Although Minn. Stat. § 237.768 makes it optional for a telephone company to include in its AFOR plan a requirement to file annual reports for the previous calendar year, USWC's AFOR Plan requires it to file with the Department on or before May 1 the annual report of financial matters for the previous calendar year. AFOR Plan VII.B.

### **2. FCC Reports**

Minn. Stat. § 237.768 requires USWC to file with the Commission and Department a copy of any filings it makes with the FCC regarding video programming provided through a video dial tone facility in Minnesota; the AFOR Plan commits USWC to make such filings. AFOR Plan VII.D.1.

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<sup>13</sup>For example, parts of Minn. Stat. § 237.764, subd. 1(c) apply only to "a telephone company with more than 1,000,000 access lines in Minnesota...."

### **3. Depreciation Filings**

USWC agrees to use Commission-prescribed depreciation lives, methods and practices regarding the depreciation and amortization of its investments associated with intrastate telecommunications services in Minnesota. AFOR Plan VII.A.

### **4. Service Quality Reports**

In its AFOR Plan, USWC agrees to report monthly data on a quarterly basis, including data in each of the categories listed in the Service Quality Attachment to this Order.

### **5. Reports Prior to Termination**

Minn. Stat. § 237.766 requires that six months prior to the termination of the plan the Commission must review the plan and, with the consent of the company, revise or renew the plan pursuant to applicable statutes. Minn. Stat. § 237.766 also requires that the AFOR Plan specify what reports the company will provide at that time (6 months prior to the termination of the plan) and must commit the company to providing such reports in sufficient detail to facilitate the Commission's review.

In its AFOR Plan, USWC stated that it would supply the following reports six months prior to the termination of the Plan:

- A report on the investment commitments implemented by USWC in connection with the AFOR Plan.
- A recommendation on whether the Plan shall continue, any proposed modification, or its termination or replacement with another Plan.

USWC also notes that at the time it files these AFOR termination reports the Commission will also have reasonably current service quality information, because USWC intends to file service quality reports quarterly. AFOR Plan III.C.

### **6. Report of Investment Commitments**

USWC proposes to file an Investment Report with the Commission annually, and again six months before the AFOR Plan would expire, summarizing the implementation of its investment plans described in AFOR Plan Appendix C. AFOR Plan III.C.

**Commission Finding:** The Commission finds that the reports promised by the Company meet or exceed statutory requirements.

#### **P. Overall Purpose of the AFOR Plans**

Minn. Stat. § 237.76 states that the purposes of AFOR Plans are three-fold:

- to provide a telephone company's customers with service of a quality consistent with Commission rules at affordable rates;
- to facilitate the development of telecommunications alternatives for customers; and

- to provide, where appropriate, a regulatory environment with greater flexibility than is available under traditional rate-of-return regulation.

Specifically, the AFOR Plan addresses the requirements regarding earnings level, affordable rates, service quality and investment commitments as spelled out in the provisions of the law. The rate reductions and limitation on rate increases offered in the Plan for essential services make them more affordable to USWC's customers. The Service Quality Settlement in AFOR Plan Appendix B provides a comprehensive set of service standards, customer remedies, and customer education provisions. In addition, the additional investments USWC commits to through the Plan are in accordance with the infrastructure enhancement requirements of the AFOR statute.

As envisioned by the AFOR legislation, USWC's AFOR Plan should provide it the regulatory flexibility to be able to position itself more effectively in a competitive environment. The AFOR Plan provides USWC the ability to address market developments immediately and more aggressively. Prices for services other than price-regulated services may be increased or decreased more readily than without an AFOR Plan. USWC will not be subject to the rate-of-return regulation or earnings investigation provisions of § 237.075 or 237.081 during the five-year life of the AFOR Plan. The AFOR Plan includes provisions for renewal or modification, subject to Commission approval, beyond the initial term.

**Commission Finding:** The Commission finds that the AFOR Plan as filed by the parties and modified by this Commission generally satisfies the major purposes of an AFOR plan as contemplated under Minn. Stat. § 237.76.

#### **IV. Possible Action by the Parties**

As a result of the Commission's modification of the AFOR Plan, parties will have 30 days from the date of this Order to file comments on the proposed modifications. Minn. Stat. § 237.764, subd. 2. At that time, the parties will also have an opportunity to comment on the following possible modifications:

**A. Modify AFOR Plan Section IV.G.1.(b) as follows:**

*With regard to price changes authorized by Section IV.E.(2.) and (3.) and (4) above, any party may file a petition for approval of rate decrease.*

Section IV.E.(4) merely lists circumstances under which USWC may seek to increase rates, not decrease them. In the context of a discussion of rate decreases, therefore, it may be appropriate to omit the reference to this section.

**B. Modify AFOR Plan Section IV.E.4.(a) as follows:**

*If after the first three years of the Plan, the Commission further reduces access charges, USWC may petition the Commission to increase the price of other price-regulated services pursuant to Section ~~G.I.(d).~~ G.I.b.*

This language may reflect a typographical error, since Section G.I.(d) pertains to changes after three years related to access charge reductions; in contrast, Section G.I.(b) expressly does not apply to Section IV.E.4.(a).

**C. Modify AFOR Plan Section IV.G.1.(f) as follows:**

- f) *Time Line for Other (Miscellaneous) Changes to Price-Regulated Services.*  
 ....  
*For purposes of this paragraph (f) d)...*

This language may reflect a typographical error; the reference to “this paragraph d)” seems incongruous appearing in paragraph (f).

**D. Modify AFOR Plan Section IV.K.3. “Local Taxes, Franchise Fees, Other Special Local Charges” as follows:**

3. *Local Taxes, Franchise Fees, Other Special ~~Local~~ Surcharges ~~Local~~ Charges.*

~~a.~~ *a) Legislatively authorized local taxes, franchise fees or ~~other~~ special surcharges (collectively (referred to as a “Surcharge”) imposed by a local or regional governmental unit on the services provided by USWC under the Plan may be recovered through a separate line item on USWC’s bill and recovered only from customers living within the jurisdiction that imposed the Surcharge and who subscribe to the service upon which the surcharge is imposed. USWC shall maintain a list of all such ~~fees, taxes or other charges~~ Surcharges along with a designation of which customers are subject to their recovery. This paragraph does not give USWC authority to recover ~~include recovery of~~ “management costs” or “right-of-way management costs” as defined in Minnesota Statutes, Section 237.162, subd. 9 or other applicable provisions of Section 237.162 or .163, as such provisions may be amended from time to time, regarding the recovery of costs by local or regional governmental al units, or the recovery of other police power fees imposed on USWC and allowed by law. Any recovery by USWC of Surcharges shall not include those charges that are currently imposed on USWC that are not currently recovered as a separate line item as of the effective date of the Plan. Subject to Section 3.(b), Surcharges may be recovered by separate line item entries on a customer’s ~~customers’~~ bill, from the effective date the Surcharge is imposed on USWC.*

~~b.~~ *b) Prior to recovery of a Surcharge, USWC shall notify the imposing governmental unit in writing of USWC’s intension to recover the Surcharge though a line item of the affected customers’ bills. Absent mutual agreement between USWC and the imposing governmental unit, USWC shall file a tariff with the Commission for review and approval identifying the Surcharge amount and the format of the line item charge on the customer bill. The tariff will take effect 30 days after the tariff filing and notice to the local or regional governmental al unit. Notwithstanding the tariff effective date, any party , including the imposing governmental al unit, may object to the tariff before the Commission or in a court of competent ~~competant~~ jurisdiction.*

By its letter of August 14, 1998, USWC submitted “corrections” to the AFOR Plan. Subsequently the SRA sent a letter on August 19 suggesting that additional changes were to be incorporated into the AFOR Plan. However, neither USWC nor SRA had the authority to amend unilaterally a position taken by six parties as of July 30, 1998. For the record, parties may wish to clarify their assent to these amendments.

**E. Modify AFOR Plan Appendix B.II.B. “Repair Customer Remedies” at 12 as follows:**

*When the Company fails to repair an out-of-service condition for DS1 or DS3*

*service within twenty-four hours of notification, a pro rata credit on the cost of the circuit and trunks will be credited to the customer's account.*

By its letter of August 14, 1998, USWC submitted this “correction” to the AFOR Plan. However, USWC lacked the authority to amend unilaterally a position taken by six parties as of July 30, 1998. For the record, parties may wish to clarify their assent to this amendment.

## **V. Commission Action**

The Commission has reviewed USWC’s AFOR Plan in light of the entire record, including clarifications obtained at the hearing. The Commission finds that the Company’s Plan as modified meets the statutory requirements found in Minn. Stat. §§ 237.76 to 237.775. Accordingly, the Commission will modify the AFOR Plan consistent with this Order.

### **ORDER**

1. Pursuant to Minn. Stat. § 237.764, subd. 2, the Commission modifies the AFOR Plan as set forth in numbered paragraphs 2 through 7 below.
2. AFOR Plan Section IV.B. “Reclassification of Services,” is modified to allow the Commission, on its own motion, to suspend a reclassification petition.
3. AFOR Plan Section IV.C. “Introduction of New Services,” is modified to allow the Commission to investigate the price, terms or conditions of a new service on its own motion.
4. AFOR Plan Section IV.D. “Initial Prices, Tariffs, and Price Lists” is modified to omit the sentence, “USWC also agrees to withdraw its Complaint on access charge reduction flow through filed against AT&T in Docket No. P442/C-97-121.”
5. The following language is added to the AFOR Plan at new Section VIII. “Competitive Enforcement”:
  - A. Expedited Proceeding. USWC agrees to the use of an expedited proceeding under Minn. Stat. § 237.61 in lieu of a contested case to develop an evidentiary record in any proceeding covered by this section that involves contested issues of material fact.
  - B. Tariff Suspension. The Commission may, within 90 days after the effective date of a USWC tariff, suspend the tariff in a proceeding covered by this section if, based on the standards applied by Minnesota courts for granting temporary injunctions, the Commission finds a suspension appropriate.
  - C. Penalties. In lieu of referral by the Commission to the Attorney General to seek penalties under Minn. Stat. § 237.461, the Commission shall require USWC to pay penalties of between \$100 and \$5000 for each day of each knowing and intentional violation.
6. AFOR Plan Appendix B, Section V. “Substantial Compliance” is modified by appending the following to the first paragraph on page 17:  
Notwithstanding other provisions of this Plan and its appendices, after the first 270

days of this Plan USWC may not provide any price-regulated service for less than its Initial Price unless 1) USWC has demonstrated substantial compliance with the quality of service standards set forth in the Plan or 2) with the Commission's assent.

7. AFOR Plan Appendix B, Section VII. "Force Majeure" is modified by adding the following at page 22:

In the event of a strike by U S WEST employees, including the continuation of the strike commenced by the Communications Workers of America on August 15, 1998, U S WEST will continue to provide the customer remedies included in Appendix B, Service Quality Settlement, Sections I.B "Installation Customer Remedies", and Section II.B "Repair Customer Remedies." In the event of a strike by U S WEST employees, including the continuation of the strike commenced by the Communications Workers of America on August 15, 1998, U S WEST will not be subject to the following Service Quality Settlement penalty provisions: Section I.C "Installation Standards"; Section II.C "Repair Standards", Section III "Service Center Answer Times"; and Section IV "Penalties" until 10 days after the conclusion of the strike.

8. Parties have 30 days from the date of this Order to file comments on these proposed modifications, pursuant to Minn. Stat. § 237.764, subd. 2.
9. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

(S E A L)

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**SERVICE QUALITY SETTLEMENT  
REPORTING CATEGORIES**

In its AFOR Plan, USWC agrees to report monthly data on a quarterly basis, including data in each of the categories listed below:

- A. Complaints, desegregated into the following sub-categories:
  - 1. about regulated services referred by the Commission, the Department or the OAG-RUD,
  - 2. received by USWC directly
- B. Customer contacts, desegregated into the following sub-categories:
  - 1. billing & collection
  - 2. repair/trouble calls
    - (1) total calls
    - (2) service outages
    - (3) line trouble (service not out)
  - 3. Installation/move orders
    - (1) total orders
    - (2) new connects
    - (3) transfers of service
- C. Installations, desegregated into the following sub-categories:
  - 1. Percentage of installation commitments met within target time for
    - (1) non-designed services, by exchange
    - (2) designed services where facilities exist
    - (3) designed services where facilities do not exist
  - 2. Customers accepting option to use
    - (1) cellular phone
    - (2) monthly credits
  - 3. unfulfilled requests (“held orders”)
    - (1) 31 - 60 days old
      - Primary lines
        - Delay due to USWC
        - Delay due to customer
      - Additional lines
        - Delay due to USWC
        - Delay due to customer
    - (2) 61 - 90 days old
      - Primary lines
        - Delay due to USWC
        - Delay due to customer
        - [Reasons for delay and plans for completion]
      - Additional lines
        - Delay due to USWC
        - Delay due to customer

- (3) 90+ days old
  - Primary lines
    - Delay due to USWC
    - Delay due to customer
    - [Reasons for delay and plans for completion]
  - Additional lines
    - Delay due to USWC
    - Delay due to customer

D. Response times, desegregated into the following sub-categories:

- 1. Residence service centers
  - (1) percentage of calls answered within 20 seconds
  - (2) number of calls answered
  - (3) number of abandoned calls
  - (4) number of calls receiving busy signals
- 2. Residence repair service centers
  - (1) percentage of calls answered within 20 seconds
  - (2) number of calls answered
  - (3) number of abandoned calls
  - (4) number of calls receiving busy signals
- 3. Business service centers
  - (1) percentage of calls answered within 20 seconds
  - (2) number of calls answered
  - (3) number of abandoned calls
  - (4) number of calls receiving busy signals
- 4. Business repair service centers
  - (1) percentage of calls answered within 20 seconds
  - (2) number of calls answered
  - (3) number of abandoned calls
  - (4) number of calls receiving busy signals
- 5. In aggregate
  - (1) percentage of calls answered within 20 seconds
  - (2) number of calls answered
  - (3) number of abandoned calls
  - (4) number of calls receiving busy signals

E. Repairs, desegregated into the following sub-categories:

- 1. Trouble report rate, by wire center
- 2. Percentage of out-of-service trouble reports for regulated services attributed to USWC, cleared within 24 hours, by exchange
- 3. Percentage meeting repair commitments, by exchange
- 4. Percentage of trouble reports experiencing a repeated report within 30 days

Source: AFOR Plan III.C; Appendix B at 18 - 21.