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Before the  
DISPATCHED Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 97-250
Tariffs Implementing Access Charge Reform	)	
	)	
U S West Communications, Inc.	)	Transmittal No. 900
Revisions to Tariff F.C.C. Nos. 3 & 5	)	

### MEMORANDUM OPINION AND ORDER

Adopted: March 27, 1998

Released: March 27, 1998

By the Chief, Competitive Pricing Division, Common Carrier Bureau:

#### I. INTRODUCTION

1. On December 30, 1997, the Common Carrier Bureau (Bureau) initiated an investigation into the provisions contained in incumbent local exchange carrier (LEC) access charge reform tariffs.<sup>1</sup> On January 28, 1998, the Bureau designated the specific issues for investigation in this proceeding in a separate order.<sup>2</sup> On March 13, 1998, U S West Communications, Inc. (U S West) filed Transmittal No. 900 to revise its Tariff F.C.C. Nos. 3 and 5. This transmittal proposes changes to U S West's access tariff filing, including the following: corrections of originating and terminating minutes of use (MOU) demand figures; an update of the end user common line (EUCL), presubscribed interexchange carrier charge (PICC) and MOU calculations to reflect the choice of EUCL rates differentiated jurisdictionally by state; and a reallocation of central office equipment (COE) maintenance expense.

2. On March 23, 1998, AT&T Corporation (AT&T) filed a petition to suspend and investigate U S West's Transmittal No. 900, and filed a motion to accept late filing of its petition. In its petition, AT&T states that U S West's revised rates are the product of an inconsistent and improper methodology for adjusting the Commission's prescribed tariff review plan (TRP) formats to reflect state-specific EUCL charges. On March 24, 1998, U S West filed a reply to AT&T's petition. In its reply, U S West argues that AT&T's petition should be rejected because AT&T's failure to file the petition on time adversely affected U S West's opportunity to respond. In addition, U S West contends that the application of state-specific EUCL charges in its tariff does not require the application of state-specific PICC and MOU rates.

<sup>1</sup> *Tariffs Implementing Access Charge Reform*, CC Docket No. 97-250, Memorandum Opinion and Order, 13 FCC Rcd 163 (Com. Car. Bur., 1997) (*Access Charge Reform Tariffs Suspension Order*).

<sup>2</sup> *Tariffs Implementing Access Charge Reform*, CC Docket No. 97-250, Order Designating Issues for Investigation and Order on Reconsideration, DA 98-151 (Com. Car. Bur., rel. Jan. 28, 1998) (*Access Charge Reform Tariffs Designation Order*).

## II. DISCUSSION

3. This transmittal raises issues that were designated for investigation in the *Access Charge Reform Tariffs Designation Order*. Therefore, we suspend this transmittal for one day, following the currently scheduled effective date, and make this transmittal subject to the investigation initiated in the *Access Charge Reform Tariffs Suspension Order*.

4. At the conclusion of the investigation, the rates that are the subject of this suspension order may be subject to the special, two-way adjustment mechanism described in the *Access Charge Reform Tariffs Suspension Order*, for the reasons stated therein.<sup>3</sup> We therefore put customers on notice that any revised rates provided in the transmittal suspended for one day by this order are provisional rates. If these provisional rates are found at the conclusion of the investigation initiated by the *Access Charge Reform Tariffs Suspension Order* to be below a just and reasonable level, we may allow carriers prospectively to charge higher rates for some elements to reflect the fact that they were charging less than would have been permitted for those elements during the pendency of the investigation. If these provisional rates are found at the conclusion of the investigation initiated by the *Access Charge Reform Tariffs Suspension Order* to be above those permitted by our rules, and thus unreasonably high, we may require the LECs to make refunds to their customers. It is also possible that, in some cases in which the same customer has paid both charges that were found to be too high and charges that were found to be too low, refunds could be offset by amounts allowed for recoupment.

5. AT&T filed its petition to suspend and investigate U S West's tariff revisions on Monday, March 23, 1998, three days after the due date for such petitions.<sup>4</sup> In its motion to accept the late filing, AT&T states that it was unable to transmit its pleading to its Washington, D.C. office for timely filing with the Commission due to "logistical difficulties."<sup>5</sup> AT&T also contends that its late filing will not prejudice U S West because AT&T faxed its petition to U S West's Washington, D.C. office on March 20, 1998, the due date for the petition. U S West replies that AT&T did not fax its petition to U S West's office until after 6:00 p.m. on March 20, 1998, which was a Friday evening, and that this late filing adversely affected U S West's opportunity to respond.<sup>6</sup> We find that AT&T has not shown good cause to accept its late filing.<sup>7</sup> AT&T has failed to adequately demonstrate why it could not file in a more timely fashion. In light of the foreshortened comment periods required under the tariff streamlining provisions of the Telecommunications Act of 1996, it is important for parties to file timely petitions in order for the Commission to consider effectively all relevant issues. Accordingly, we deny AT&T's motion to accept its late-filed petition.

## III. EX PARTE REQUIREMENTS

6. This investigation is a permit-but-disclose proceeding and subject to the permit-but-disclose

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<sup>3</sup> *Access Charge Reform Tariffs Suspension Order* at §§ 7-8.

<sup>4</sup> *See* 47 C.F.R. § 1.773(a)(2)(iii).

<sup>5</sup> AT&T Motion to Accept Late Filing at 1.

<sup>6</sup> U S West Reply at 1.

<sup>7</sup> The Commission can waive its rules, including provisions on timely filing of petitions against tariffs, if good cause is shown. *See* 47 C.F.R. § 1.3.

requirements under Section 1.1206(b) of the rules, 47 C.F.R. § 1.1206(b), as revised. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. See 47 C.F.R. § 1.1206(b)(2), as revised. Other rules pertaining to oral and written presentations are set forth in Section 1.1206(b), as well.

#### IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED, pursuant to Section 204(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 204(a), and through the authority delegated pursuant to Sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, that the tariff revisions filed by U S West Communications, Inc. ARE SUSPENDED for one day from the effective date and an investigation of the referenced tariff transmittal IS INSTITUTED AND CONSOLIDATED in CC Docket No. 97-250.

8. IT IS FURTHER ORDERED that U S West Communications, Inc. SHALL FILE, within five business days of the release date of this Order, tariff revisions to reflect the one day suspension from the currently scheduled effective date of March 28, 1998. U S West Communications, Inc. should cite the DA number of the instant Order as the authority for this filing.

9. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 204(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 204(a), and through the authority delegated pursuant to Sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, that U S West Communications, Inc. SHALL KEEP ACCURATE ACCOUNT of all amounts received by reason of the provisions that are the subject of this investigation.

10. IT IS FURTHER ORDERED that AT&T's motion to accept late filing of its petition is DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Jane E. Jackson  
Chief, Competitive Pricing Division  
Common Carrier Bureau