

## U S WEST CENTREX WITHDRAWAL CASES

- Arizona:** In the Matter of U S WEST Communications, Inc. - Filing to Discontinue Offering Centrex Plus Service to New Customers, Docket No. E-1051-96-060, Decision No. 59879 (AZ CC October 29, 1996)
- Colorado:** The Investigation and Suspension of Tariff Sheets Filed by U S WEST Communications, Inc., with Advice Letter No. 2578 Regarding Discontinuance of Offering Centrex Plus Service to New Customers, Decision No. R96-931 (Recommended Decision of ALJ), Docket Nos. 96S-071T / 96A-051T (Colorado PUC September 3, 1996)
- The Investigation and Suspension of Tariff Sheets Filed by U S WEST Communications, Inc., with Advice Letter No. 2578 Regarding Discontinuance of Offering Centrex Plus Service to New Customers, Decision No. C96-1307, Docket Nos. 96S-071T / 96A-051T (Colorado PUC December 20, 1996) [denying exception's to ALJ's decision]
- Idaho:** In the Matter of U S WEST Communications, Inc.'s Filing of Tariff Advice No. 96-03-SC, Case No. USW-S-96-1, Order No. 26677 (ID PUC November 14, 1996)
- Iowa:** McLeod Telemanagement, Inc. v. U S WEST Communications, Inc., Docket Nos. FC U-96-1 / FCU-96-3 (Iowa UB June 14, 1996)
- Minnesota:** In the Matter of the Request of US WEST Communications, Inc. to Grandparent CENTROL Services With Future Discontinuance of CENTRON, CENTREX, and Group Use Exchange Services, OAH Docket No. 3-2500-10567-2, MPUC Docket No. P-421/EM-96-471 (Recommended Order of ALJ) (MPUC December 23, 1996)
- Nebraska:** In the Matter of McLeod Telemanagement, Inc.; MCI Telecommunications Corp. Inc.; and AT&T Communications of the Midwest, Inc. v. U S West Communications, Inc., Docket Nos. FC-1252, FC-1253, FC-1254 (Nebraska PSC November 25, 1996)

- North Dakota:** McLeod Telemanagement, Inc., vs. U S WEST Communications, Inc.,  
Case No. PU-1452-96-70, (ND PSC November 6, 1996)
- U S WEST Communications, Inc. v. North Dakota Public Service  
Commission and McLeod Telemanagement, Inc., Burleigh County District  
Court No. 08-96-C-2536 (January 24, 1997)
- Oregon:** In the Matter of Transmittal No. 96-007-PL, a Price List Filing relating to  
its Centrex Plus and Centraflex 2 service, submitted by U S WEST  
Communications, Inc., Order No. 96-067, Docket Nos. UT 126 / UT 790  
(Oregon PUC March 7, 1996)
- South Dakota:** In the Matter of the Application of U S WEST Communications, Inc. to  
Discontinue its Centrex Plus Services to New Customers, Docket No.  
TC96-023 (South Dakota PUC August 22, 1996)
- U S West Communications, Inc. v. Public Utilities Commission of South  
Dakota, Civ. 96-330, Order Affirming Decision, Findings of Fact, and  
Conclusions of Law and Order of South Dakota Public Utilities  
Commission, by Steven L. Zinter, Circuit Court Judge, South Dakota Sixth  
Judicial Circuit (December 2, 1996)
- Utah:** In the Matter of the Filing by U S WEST Communications, Inc., a Revised  
Tariff to Discontinue Centrex Plus Service to New Customers, Docket No.  
96-049-T05 (Utah PSC September 25, 1996)
- Washington:** Washington Utilities and Transportation Commission v. U S WEST  
Communications, Inc., Docket No. UT-960126, Fifth Supplemental Order  
(Washington UTC December 26, 1996)
- Wyoming:** In the Matter of the Application of U S WEST Communications, Inc., for  
Authority to Move its Centrex Plus Service to the Obsolete Section of the  
Exchange and Network Service Price Schedule and Discontinuing the  
Offering to New Customers, Docket No. 70000-T-96-279 (Wyoming PSC  
September 6, 1996)

**SYNOPSIS OF HOLDINGS  
IN U S WEST CENTREX WITHDRAWAL CASES**

- Arizona:** The Commission concluded (at p.2) that U S WEST's withdrawal of Centrex Plus "appears to be an attempt to avoid the resale of Centrex Plus as required by the provisions of the Telecommunications Act of 1996."
- Colorado:** The Administrative Law Judge found (at p.8) that "[t]he proposal of U S WEST to withdraw its offering of Centrex Plus and the grandparenting of the service for existing customers, in effect imposes an unreasonable and discriminatory limitation on the resale of Centrex Plus service which is prohibited and contrary to the Federal Telecommunications Act of 1996 and the provisions of Section 40-3-102 C.R.S."
- The full Commission upheld the ALJ's Order on the basis that "the discontinuance of Centrex would be inconsistent with the [Telecommunications Act of 1996] and Colorado statutes to the extent those enactments mandate policies to encourage competition in the local exchange market." (pp.4-5)
- Idaho:** The Commission denied complaints and petitions for reconsideration against the withdrawal of Centrex Plus, relying upon "the absence of evidence showing a present or immediate need for Centrex Plus by either AT&T or MCI, and no lasting effect on the offering of competitive local services." McLeodUSA's requests for intervention and reconsideration were rejected as untimely. (Order on Reconsideration, pp.3-5)
- Iowa:** The Board found that the "development of competition in the local exchange market will be furthered by requiring U S West to provide Centrex Plus service without restrictions until it has developed a replacement service which has been approved by the Board." (Decision and Order, pp. 9-10). A state court upheld (at p.22) the Board's decision as "supported by substantial evidence."
- Minnesota:** In a series of orders, the Minnesota Commission repeatedly rejected U S WEST requests to withdraw Centrex Plus/Centron, in part because such an effort "violates the Federal Telecommunications Act of 1996 . . . ." (Order Denying Petition, p. 10)
- Montana:** The Commission denied several requests to prevent U S WEST from withdrawing Centrex Plus, concluding that "[e]ven if centrex resale would quickly benefit some consumers by offering lower prices, it is unclear that such benefits would be sustainable or economic." (Final Order, p. 17)

- Nebraska:** As noted in McLeodUSA's Petition, the Nebraska Commission allowed US WEST to withdraw Centrex Plus because under state law "not every discrimination by a telephone company or other utility that is objectionable but only such discriminations that are unjust or arbitrary." (Opinions and Findings, p. 4)
- North Dakota:** The Commission found U S WEST's effort to withdraw Centrex Plus to be unlawful (at p.3), as "[e]ven if state statutes did not provide the Commission with the authority to act, . . . the Commission has sufficient authority under the federal Telecommunications Act of 1996 to prohibit an incumbent local exchange carrier like USWC from withdrawing a service." A state court upheld the Commission's decision (at pp.5-6) on the grounds that the Commission's findings of discrimination under state law were sufficient to support its decision.
- Oregon:** The Commission suspended U S WEST's tariff withdrawing Centrex Plus and docketed it for investigation on the basis of a Staff recommendation that resellers should be allowed to use Centrex Plus lines to provide service. (Order, p. 1)
- South Dakota:** The Commission rejected U S WEST's attempt to withdraw Centrex Plus (at p. 4) because, among other things, withdrawal would "impose unreasonable and discriminatory conditions or limitations on the resale of telecommunications services." A state judge upheld the Commission's ruling in a bench decision (at p.9), noting that "the findings of discrimination are sustained by substantial evidence and the Commission has jurisdiction to prevent discriminatory practices under the state and federal statutes . . . ."
- Utah:** In a series of orders, the Commission found that U S WEST's efforts to withdraw Centrex Plus constituted "an anti-competitive discrimination against both resellers and potential subscribers." (Second Report and Order, p.7)
- Washington:** The Commission denied U S WEST's effort to withdraw Centrex Plus (at p.12) because it would "substantially restrict resellers' ability to meet consumers' needs."
- Wyoming:** The Commission concluded (at p.23) that the withdrawal and grandfathering of Centrex Plus service would "seriously impair the ability of other providers to competitively access and compete in the local exchange market." This decision was upheld on rehearing.

BEFORE THE ARIZONA CORPORATION COMMISSION

RENZ D. JENNINGS  
Chairman  
MARCIA WEEKS  
Commissioner  
CARL J. KUNASEK  
Commissioner

IN THE MATTER OF U S WEST  
COMMUNICATIONS, INC. - FILING TO  
DISCONTINUE OFFERING CENTREX PLUS  
SERVICE TO NEW CUSTOMERS.

DOCKET NO. E-1051-96-060

DECISION NO. 59879

ORDER Arizona Corporation Commission  
**DOCKETED**

OCT 29 1996

Open Meeting  
October 29, 1996  
Phoenix, Arizona

DOCKETED BY *[Signature]*

BY THE COMMISSION:

FINDINGS OF FACT

1. U S WEST Communications, Inc. (U S WEST) is certified to provide telephone service as a public service corporation in the State of Arizona.

2. On February 6, 1996, U S WEST filed tariff revisions to discontinue offering Centrex Plus Service to new customers and discontinue offering the service to existing customers after April 29, 2005:

Exchange and Network Service Tariff

Section 109, Page 1, Release 2  
Section 109, Page 28, Release 2  
Section 109, Page 43, Release 2  
Section 109, Page 50, Release 2

Competitive Exchange and Network Services Tariff

Section 1, Page 3, Release 2  
Section 1, Page 5, Release 2  
Section 1, Page 6, Release 2  
Section 9, Index Page 1, Release 2  
Section 9, Page 3, Release 2  
Section 109, Index Page 1, Release 2  
Section 109, Page 1.1, Release 1  
Section 109, Pages 4 through 67, Release 1

3. In its filing, U S WEST indicated that it was developing a replacement service. Centrex Plus Service is a central office-based alternative to customer premises equipment-based

1 services. On February 21, 1996, the Commission suspended the filing for one hundred twenty  
2 days (Decision No. 59516).

3 4. On June 5, 1996, the Commission suspended the filing for an additional period of one  
4 hundred eighty days (Decision No. 59679). At the time, U S WEST had not indicated the  
5 alternative service that is intended to replace Centrex Plus Service.

6 5. U S WEST also proposes to add language to its Obsolete Services Tariff which  
7 indicates that the discontinuance provisions in the Centrex Plus tariff would also apply to its  
8 existing Centrex, Electronic Switching System Service and Airport Intercommunicating Service  
9 customers. These services are provided to customers who originally subscribed to earlier versions  
10 of the central office-based alternative to customer premises equipment-based services.

11 6. Since the time that U S WEST submitted this filing, a number of parties have  
12 expressed a keen interest in U S WEST's proposal. These parties include Internet service  
13 providers, the Telemanagement Coalition (an association of entities that resell Centrex Plus  
14 Service), MFS Incinet of Arizona, Inc. (a certificated local exchange service provider), McLeod  
15 Telemanagement, Inc., AT&T Communications of the Mountain States, Inc. and MCI  
16 Telecommunications Corporation.

17 7. During its review of the filing, Staff contacted other states where U S WEST provides  
18 Centrex Plus Service. These discussions revealed several problems with U S WEST's proposal:

- 19 a. The filing appears to be an attempt to avoid the resale of Centrex Plus Service as  
20 required by the provisions of the Telecommunications Act of 1996 since it would  
21 no longer be a service available at retail to U S WEST's customers.
- 22 b. The filing could be considered anti-competitive since new competitors entering the  
23 local telephone service market are likely to resell U S WEST local services until  
24 they have their own networks in place.
- 25 c. Centrex Plus service may not be a fully competitive service and therefore some  
26 customers may be left with no alternative to U S WEST provided Centrex Plus  
27 Service.
- 28 d. U S WEST has not forwarded its proposed alternative to Centrex Plus Service.

29 8. Staff concludes that these are significant problems and recommends that the U S  
30 WEST request not be approved.

CONCLUSIONS OF LAW

1. U S WEST is an Arizona public service corporation within the meaning of Article XV, Section 2, of the Arizona Constitution.

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

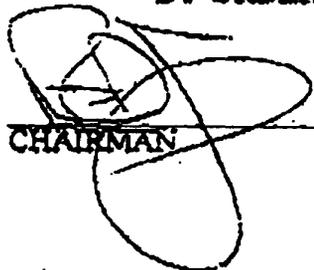
3. The Commission, having reviewed the tariff pages (copies of which are contained in the Commission tariff files) and Staff's Memorandum dated October 18, 1996, concludes that it is not in the public interest to approve request to withdraw Centrex Plus Service.

ORDER

THEREFORE, IT IS ORDERED that the request to withdraw Centrex Plus Service is denied.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

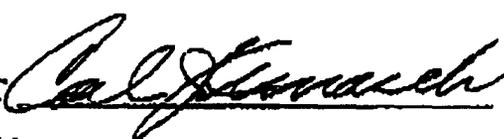
  
CHAIRMAN

  
COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, JAMES MATTHEWS, Executive Secretary of the Arizona Corporation Commission, have hereunto, set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this 29 day of October, 1996.

  
JAMES MATTHEWS  
Executive Secretary

DISSENT 

GY:WS:lhk

Decision No. 59879

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

\* \* \*

THE INVESTIGATION AND SUSPENSION)  
OF TARIFF SHEETS FILED BY )  
U S WEST COMMUNICATIONS, INC., )  
WITH ADVICE LETTER NO. 2578 ) DOCKET NO. 96S-071T  
REGARDING THE DISCONTINUANCE OF )  
OFFERING CENTREX PLUS SERVICE TO)  
NEW CUSTOMERS. )

IN THE MATTER OF ADVICE LETTER )  
NO. 2578, REGARDING U S WEST ) DOCKET NO. 96A-051T  
COMMUNICATIONS' VERIFIED APPLI- )  
CATIONS PER RULE 57. )

RECOMMENDED DECISION OF  
ADMINISTRATIVE LAW JUDGE  
WILLIAM J. FRITZEL  
PERMANENTLY  
SUSPENDING AND CANCELLING TARIFF  
SHEETS FILED WITH ADVICE LETTER  
NO. 2578, AND DENYING REQUEST TO  
DISCONTINUE CENTREX PLUS SERVICE AS TO NEW CUSTOMERS

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Mailed Date: September 3, 1996  
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- Appearances: Kathryn E. Sheffield, Esq., Denver,  
Colorado, for U S WEST Communications,  
Inc.;
- Douglas G. Bonner, Esq., Washington, D.C.,  
for MFS Intelenet of Colorado, Inc.;
- Mark P. Trincherro, Esq., Portland, Oregon,  
for Enhanced Telemanagement, Inc., doing  
business as Frontier Telemanagement;
- Thomas F. Dixon, Esq., Denver, Colorado for  
MCI Telecommunications Corporation;
- Rebecca DeCook, Esq., Denver, Colorado, for  
AT&T Communications of the Mountain  
States, Inc.;
- Andrew Cohen, Esq., Denver, Colorado, and  
David Conn, Esq., Cedar Rapids, Iowa, for  
McLeod Telemanagement, Inc.; and

Elizabeth A. Wendel, Assistant Attorney  
General, for the Office of Consumer  
Counsel.

I. STATEMENT OF THE CASE

1. On February 5, 1996, U S WEST Communications, Inc. ("U S WEST"), filed Advice Letter No. 2578, dated February 5, 1996.

2. U S WEST stated that the purpose of this tariff filing is to discontinue the offering of Centrex Plus service to new customers. U S WEST requested that the tariffs accompanying Advice Letter No. 2578 become effective on 30 days' statutory notice or on March 7, 1996.

3. On February 21, 1996, the Commission in Decision No. C96-221 suspended the effective date of the tariffs and scheduled the matter for hearing for June 21, 1996.

4. On February 5, 1996, U S WEST also filed a verified application per Rule 57 of the Colorado Public Utilities Commission's Rules of Practice and Procedure, 4 Code of Colorado Regulations ("CCR") 723-1. U S WEST requested expedited treatment of the application designated as Docket No. 96A-051T pursuant to Rule 57(e), Rule 24 of the Commission's Rules of Practice and Procedure, and § 40-6-109(5), C.R.S.

5. Notice of this application was issued by the Commission on February 7, 1996.

6. Notices and/or Petitions to Intervene were filed by the Colorado Office of Consumer Counsel ("OCC"); MCI Telecommunications Corporation; MFS Intelenet of Colorado, Inc.; AT&T Communications of the Mountain States, Inc.; Enhanced Telemanagement, Inc., doing

business as Frontier Telemanagement; and McLeod Telemanagement, Inc.

7. The hearing was held as scheduled on June 21, 1996 and on one additional day, August 8, 1996. Testimony was received from witnesses and Exhibit Nos. 1 through 23 were marked for identification and admitted into evidence. Late-filed exhibit Nos. 24 and 26, which are admitted into evidence, were filed on August 26, 1996. Late-filed exhibit No. 25, which is an order of the Wyoming Public Service Commission in Docket No. 70000-TC-96-279 will be filed as soon as it becomes available. Statements of position were filed by the parties on August 30, 1996.

8. Pursuant to § 40-6-109, C.R.S., the record of this proceeding is transferred to the Commission along with a written recommended decision.

#### Findings of Fact and Conclusions of Law

1. U S WEST, by Advice Letter No. 2578, requests that the Commission approve its proposal to discontinue Centrex Plus service to new customers, effective February 5, 1996, and to grandparent existing Centrex Plus customers until April 29, 2005, under the terms and conditions of the tariffs attached to Advice Letter No. 2578.

2. U S WEST believes that this action is necessary to address price arbitrage and to concentrate resources on developing a replacement Centrex type product. U S WEST plans to replace Centrex Plus with another product in the last quarter of this year.

Because of the impact of the Federal Telecommunications Act, of 1996, as well as recent State legislation providing for competition in the local exchange market, U S WEST states that it is concerned that Centrex Plus, having significant price advantages compared to the price of its basic business service and features, creates uneconomic arbitrage when Centrex Plus is purchased by resellers. U S WEST priced Centrex Plus on the assumption that large businesses and governmental entities would obtain the service, linking an individual organization in a relatively compact location. U S WEST points out that resellers of Centrex could take advantage of the price differential between Centrex Plus and U S WEST basic exchange business service by reselling the Centrex Plus service to unrelated and remote small businesses, who would normally obtain business lines with features. U S WEST would obtain less revenue from resold Centrex Plus under the current rates than it could from business lines with features and resellers could aggregate intraLATA and interLATA traffic to bypass toll and switched access services of U S WEST.

3. U S WEST requests that the current Centrex Plus customers be grandparented to avoid disruptions of their current customers.

4. Intervening telecommunications companies oppose the proposal of U S WEST to discontinue Centrex Plus. Under the new competitive environment, intervening telecommunications companies intend to enter the local exchange market in Colorado. Several of the intervenors have applied for certificates of public convenience and necessity to provide local exchange service. Intervenors

intend to initiate local exchange service in Colorado by initially reselling local exchange services purchased from U S WEST. They believe that the availability for purchase of Centrex Plus would be an important factor in providing their customers a full range of services which will effectuate the stated policy of both the Colorado General Assembly and Congress in providing competition in local exchange market. The intervening telecommunications companies believe that the proposal of U S WEST to withdraw Centrex Plus for all new customers is anti-competitive and inconsistent with State and Federal law and policy. In order to initially and effectively compete with the incumbent local exchange carrier ("LEC"), Intervenors will need to resell local exchange services purchased from U S WEST. Intervenors are concerned that if U S WEST withdraws its Centrex Plus offering, they will be unable to offer this service. Intervenors point out that if U S WEST withdrew and grandparented Centrex Plus service, there presently would be no functionally equivalent service which the Intervenors could purchase for resale. Intervenors would be forced to buy and resell higher priced alternatives to Centrex Plus service.

5. OCC believes that U S WEST's proposal to withdraw offering Centrex Plus to new customers and grandparenting existing customers creates a significant barrier to the entry of competitors in the local exchange market and increases costs to small business customers since they would be forced to pay a higher price for comparable services. OCC believes that any restrictions on resale of

7. It is clear from a reading of the above Colorado statutes, rules, and the Federal Telecommunications Act of 1996 that LECs are required to offer telecommunications services for resale to competitors. The law prohibits any unreasonable or discriminatory conditions or limitations on the resale of the service in order to facilitate the development of competition in the local exchange markets. The proposal of U S WEST to withdraw its offering of Centrex Plus and the grandparenting of the service for existing customers, in effect imposes an unreasonable and discriminatory limitation on the resale of Centrex Plus service which is prohibited and contrary to the Federal Telecommunications Act of 1996 and the provisions of Section 40-3-102 C.R.S. It is found and concluded that the proposal to withdraw Centrex Plus places an unreasonable economic barrier to entry of competitors in the local exchange market which is prohibited by State and Federal law. It is further found that it would not be in the public interest to approve the proposal of U S WEST in the instant dockets to withdraw and grandparent Centrex Plus service at this time. U S WEST can address price arbitrage by filing appropriate tariffs to reprice its Centrex Plus service given the new competitive environment. It is also possible that in the future, as suggested by OCC, that U S WEST can withdraw its Centrex Plus offering with the Commission's approval provided that a functionally equivalent replacement service to Centrex Plus is offered.

Commission conducted extensive rulemaking proceedings to implement competition in the local exchange market in Colorado. Since the resale of local exchange telecommunications services is an important factor for the immediate entry of competitors into the local exchange market, the Commission adopted Rules for the Resale of Telecommunications Exchange Services. Rule (4 CCR) 723-40-3.1 provides that:

723-40-3.1 To encourage the development of balanced competition, all facilities-based telecommunications providers shall neither prohibit nor impose unreasonable or discriminatory conditions or limitations on, the resale of their regulated telecommunications services.

The Telecommunications Act of 1996, 47 U.S.C. § 251(b)(1) imposes upon all LECs the duty:

- (1) . . . Not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of its telecommunications services.

Section 251(c)(4) further requires with respect to resale, the duty of incumbent LECs:

- (A) To offer for resale at wholesale rates, any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers; and
- (B) Not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service, except that a State commission may, consistent with regulations prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates, a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers.

7. It is clear from a reading of the above Colorado statutes, rules, and the Federal Telecommunications Act of 1996 that LECs are required to offer telecommunications services for resale to competitors. The law prohibits any unreasonable or discriminatory conditions or limitations on the resale of the service in order to facilitate the development of competition in the local exchange markets. The proposal of U S WEST to withdraw its offering of Centrex Plus and the grandparenting of the service for existing customers, in effect imposes an unreasonable and discriminatory limitation on the resale of Centrex Plus service which is prohibited and contrary to the Federal Telecommunications Act of 1996 and the provisions of Section 40-3-102 C.R.S. It is found and concluded that the proposal to withdraw Centrex Plus places an unreasonable economic barrier to entry of competitors in the local exchange market which is prohibited by State and Federal law. It is further found that it would not be in the public interest to approve the proposal of U S WEST in the instant dockets to withdraw and grandparent Centrex Plus service at this time. U S WEST can address price arbitrage by filing appropriate tariffs to reprice its Centrex Plus service given the new competitive environment. It is also possible that in the future, as suggested by OCC, that U S WEST can withdraw its Centrex Plus offering with the Commission's approval provided that a functionally equivalent replacement service to Centrex Plus is offered.

8. Pursuant to § 40-6-109(2), C.R.S., it is recommended that the Commission enter the following order.

## II. ORDER

The Commission Orders That:

1. The request of U S WEST Communications, Inc., to discontinue the offering of Centrex Plus Service to new customers and to grandparent existing customers is denied.

2. The tariffs filed by U S WEST Communications, Inc., with Advice Letter No. 2578 are permanently cancelled and suspended.

3. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

4. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the Decision is stayed by the Commission upon its own motion, the recommended decision shall become the Decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b. If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or

8. Pursuant to § 40-6-109(2), C.R.S., it is recommended that the Commission enter the following order.

## II. ORDER

The Commission Orders That:

1. The request of U S WEST Communications, Inc., to discontinue the offering of Centrex Plus Service to new customers and to grandparent existing customers is denied.

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a. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the Decision is stayed by the Commission upon its own motion, the recommended decision shall become the Decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b. If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or

the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the Administrative Law Judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

5. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(SEAL)



THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

WILLIAM J. FRITZEL

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Administrative Law Judge

071T.WJF

Decision No. C96-1307

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 96S-071T

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RE: THE INVESTIGATION AND SUSPENSION OF TARIFF SHEETS FILED BY U S WEST COMMUNICATIONS, INC., WITH ADVICE LETTER NO. 2578 REGARDING THE DISCONTINUANCE OF OFFERING CENTREX PLUS SERVICE TO NEW CUSTOMERS.

DOCKET NO. 96A-051T

IN THE MATTER OF THE ADVICE LETTER NO. 2578, REGARDING U S WEST COMMUNICATIONS' VERIFIED APPLICATION PER RULE 57.

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DECISION ON EXCEPTIONS

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Mailed Date: December 20, 1996  
Adopted Date: October 16, 1996

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of Exceptions to Recommended Decision No. R96-931 issued by the Administrative Law Judge ("ALJ") on September 3, 1996. Exceptions to the Recommended Decision have been filed by U S WEST Communications, Inc. ("USWC" or "Company"), pursuant to the provisions of § 40-6-109, C.R.S. The Colorado Office of Consumer Counsel, AT&T Communications of the Mountain States, Inc., Frontier Telemanagement, Inc., McLeod Telemanagement, MCI Communications Corporation, and MFS Intelenet of Colorado, Inc. (referred to collectively as "Intervenors"), filed their Joint Response to Exceptions. In Decision No. R96-931, the ALJ,

in essence, recommended that USWC's proposal to discontinue the offering of Centrex Plus service to new customers<sup>1</sup> be rejected. USWC excepts to that recommendation. Now being duly advised in the premises, we deny the exceptions and affirm the Recommended Decision.

**B. Discussion**

1. On February 5, 1995, the Company filed Advice Letter No. 2575 and a verified application pursuant to the provisions of Rule 57, Commission Rules of Practice and Procedure, 4 Code of Colorado Regulations 723-1. The point of both filings is to discontinue the offering of Centrex service to new customers. As noted in the Recommended Decision (pages 3 and 4), USWC's primary reason for proposing to discontinue Centrex is its concern that the resale of the service would provide resellers an opportunity for price arbitrage and would, thereby, lead to significant reductions in Company revenues from business basic exchange, toll, and switched access.

2. As the Recommended Decision accurately noted, the Telecommunications Act of 1996, Public Law No. 104-104, 110 Stat. 56 (1996) (codified at 47 U.S.C. §§ 151 et seq.) ("Act"), and §§ 40-15-501 et seq., C.R.S., provide for competition in the market for local exchange services. In part, these enactments implement local exchange competition by requiring incumbent local

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<sup>1</sup> Under the Company's proposals, existing Centrex customers would be "grandfathered" (i.e. would be permitted to continue receiving Centrex service until April 29, 2005).

exchange carriers, such as USWC, to offer for resale, any telecommunications service provided at retail. Pursuant to these resale provisions, the Company is required to offer Centrex to competing carriers for resale to end-users. The ALJ concluded that withdrawal of Centrex by USWC would constitute an unreasonable and discriminatory limitation on the resale of the service which is contrary to the Act, and §§ 40-15-501 et seq., C.R.S. The Exceptions primarily take issue with this conclusion.<sup>2</sup>

3. We agree with the ALJ and the Intervenors that discontinuance of Centrex at this time would be inconsistent with the intent of the Act and Colorado statutes mandating competition in the local exchange market. In § 40-15-501, C.R.S., for example, the Legislature stated:

The general assembly hereby finds, determines, and declares that competition in the market for basic local exchange service will increase the choices available to customers and reduce the costs of such service. Accordingly, it is the policy of the state of Colorado to encourage competition in this market and strive to

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<sup>2</sup> The Company, in perfunctory comment, suggests that the ALJ failed to consider its Post-Hearing Briefs before entering the Recommended Decision, and that this failure resulted in a denial of its "right to due process." See USWC Exceptions, page 3. This suggestion is based upon the observation that the Recommended Decision was issued on the first business day following submission of the briefs. No further explication of this suggestion was provided in the Exceptions, and we reject it. We note that a presumption of regularity attaches to the proceedings before the ALJ, including the issuance of the Recommended Decision. *Eliopoulos v. Colorado State Personnel Board*, 705 P.2d 1035 (Colo. App. 1985). Without a clear showing of improper conduct on the part of the ALJ--the bare observation that the Recommended Decision was issued one business day following submission of closing briefs does not amount to such a showing--it is impermissible for the Commission to inquire into the mental process or procedure by which the ALJ reached his decision. *Public Utilities Commission v. District Court*, 431 P.2d 773 (Colo. 1967).

ensure that all consumers benefit from such increased competition. . . .

(emphasis added). Moreover, § 40-15-503((2)(a)(IV)), C.R.S., specifically mandates that the Commission adopt rules relating to the terms and conditions for resale of services that will enhance competition.<sup>3</sup>

4. In short, both the Act and Colorado statutes (i.e., §§ 40-15-501 et seq., C.R.S.) contemplate that competition in the local exchange market will be effectuated, in part, through the resale of incumbents' services. The evidence in this proceeding indicates that discontinuance of Centrex for new customers would frustrate the efforts of new carriers to enter the local exchange market in this state. In particular, Intervenor in this case specifically stated that they would likely purchase Centrex from the Company in their efforts to enter the market in Colorado. The evidence also demonstrates that new entrants have purchased Centrex for resale as part of their provision of local service in other states. We also note that the resale of Centrex in other states has resulted in the entry of new providers into the small and medium segment of the business local exchange market. Based upon such evidence, we agree that discontinuance of Centrex would be inconsistent with the Act and Colorado statutes to the extent those enactments

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<sup>3</sup> In fact, the Commission has adopted rules relating to the resale of telecommunications services. See 4 CCR 723-40.

mandate policies to encourage competition in the local exchange market.

5. We observe that Centrex is a service presently being utilized by ratepayers. To the extent the Company wishes to withdraw such an offering, it is required to provide a valid reason for doing so. No such reason was proffered in this case. With respect to USWC's concern regarding arbitrage of Centrex, we observe that if Centrex is priced inappropriately, this is a matter which can be addressed by the Company and the Commission by repricing of the service to end-users, and by the pricing set for resale of the offering. A concern regarding arbitrage is not reason to discontinue a product presently being used by customers. In short, we agree with the Intervenors that USWC did not meet its burden of providing a valid reason for discontinuing Centrex.

6. USWC lastly suggests that the ALJ erred in failing to clarify that the resale of Centrex is subject to the same limitations as are currently in place in its interim interconnection and unbundling tariffs (Docket No. 96S-233T), and in failing to clarify that resellers of Centrex may not use the service as a toll aggregation tool. In response, the Intervenors appear to argue that the interim tariffs do not apply to Centrex.

7. We emphasize that it is not our intent to abrogate any of the interim tariffs in the present order. Provisions in those interim tariffs, to the extent they are not modified by

other Commission decisions (e.g., our orders in Applications for Arbitration under § 252 of the Act),<sup>4</sup> are subject to review in Docket No. 96S-331T.

**C. Conclusion**

1. For the reasons stated above, we conclude that the Exceptions to Recommended Decision No. R96-931 should be denied.

**II. ORDER**

**A. The Commission Orders That**

1. The Exceptions to Recommended Decision No. R96-931 filed by U S WEST Communications, Inc., on September 23, 1996 are denied.

2. The 20-day period provided for in § 40-6-114(1), C.R.S, within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the Mailed Date of this Decision.

3. This Order is effective on its Mailed Date.

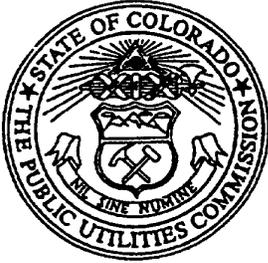
**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING October 16, 1996.**

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<sup>4</sup> For example, Decision No. C96-1185, pages 27-28, Docket No. 96A-287T (MFS Petition for Arbitration), sets forth certain relevant directives regarding the Company's proposed restrictions on resale.

( S E A L )

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO



ROBERT J. HIX

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VINCENT MAJKOWSKI

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R. BRENT ALDERFER

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ATTEST: A TRUE COPY

*Bruce N. Smith*

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Bruce N. Smith  
Director

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**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF U S WEST** ) **CASE NO. USW-S-96-1**  
**COMMUNICATIONS, INC.'S FILING OF** )  
**TARIFF ADVICE NO. 96-03-SC** )  
\_\_\_\_\_ ) **ORDER NO. 26752**

This case was initiated when U S WEST Communications, Inc. (U S WEST) notified the Commission that it intended to discontinue Centrex Plus, an unregulated telecommunications service for business customers. Complaints thereafter were filed by AT&T Communications of the Mountain States (AT&T) and MCI Telecommunications Corp. (MCI) alleging that the withdrawal of Centrex Plus was anticompetitive and adverse to the public interest. AT&T and MCI asked the Commission to assume regulatory control over Centrex Plus pursuant to *Idaho Code* § 62-605(5). That section allows the Commission to reassert regulatory control of a previously regulated service upon a finding that the terms and conditions of the service are adverse to the public interest. The Commission on November 14, 1996 issued Order No. 26677 concluding that the record did not support a finding that US WEST's withdrawal of its Centrex Plus service would be adverse to the public interest. On December 5, 1996, a Joint Petition for Reconsideration was filed by AT&T and MCI. A separate Petition for Reconsideration was filed by McLeod Telemanagement, Inc. (McLeod), a company that had not previously participated in the case. The Petitions request that the Commission reconsider its Order No. 26677.

**The Petition of AT&T and MCI**

As grounds for granting their Petition for Reconsideration, AT&T and MCI make the following assertions:

1. The Commission concluded that the complaining parties (AT&T and MCI) had the burden of proof under *Idaho Code* § 62-605(5) to show an adverse effect on the public interest. AT&T and MCI argue that, because this case was initiated as a tariff advice filing, the burden of proof should lie with U S WEST.
2. AT&T and MCI interpret the Commission's Order to require proof of immediate or permanent harm to the public interest to entitle them to relief under Section 62-605(5). AT&T and

provision [*Idaho Code* §62-605(5)] that AT&T and MCI bear the burden of showing that as adverse to the public interest.” Tr. p. 3. AT&T and MCI now argue that, because this proceeding began when U S WEST notified the Commission it intended to withdraw Centrex Plus, this is a tariff advice filing and U S WEST should be regarded as an applicant with the burden of proof.

The argument by AT&T and MCI ignores the process by which this case was presented. Centrex Plus is a Title 62 service which the Commission normally does not economically regulate. Had AT&T and MCI not filed their complaints, this matter would have ended with the notice filed by U S WEST. The Commission’s authority to review the terms and conditions of Title 62 services arises only by Section 62-605(5), which is invoked upon a complaint to the Commission, notice to the telecommunications provider, and a hearing. Given this process and the limited authority of the Commission to review Title 62 services, we believe the statute places the burden of proof with the complaining party to meet the evidentiary standards of Section 62-605(5).

The remainder of the exceptions argued by AT&T and MCI focus on isolated findings contained in Order No. 26677. For example, the Commission stated that no evidence was presented showing that AT&T or MCI had a “present need to have Centrex Plus available for a single customer of theirs”, or that “Centrex Plus withdrawal will have a permanent effect on the offering of competitive local services.” Order No. 26677, p. 4. AT&T and MCI deduce from this a burden created by the Commission to prove an immediate and permanent harm to the public interest under Section 62-605(5).

This argument by the complainants misconstrues the findings of the Commission. The Commission in the quoted language summarized a portion of the evidence that was presented, but did not hold that proof of immediate and permanent harm was required. Instead, the Commission reviewed all the evidence to determine whether adverse harm to the public interest had been shown. Among the factors considered by the Commission in reaching its determination was the absence of evidence showing a present or immediate need for Centrex Plus by either AT&T or MCI, and no lasting effect on the offering of competitive local services. These findings, which are not challenged by AT&T and MCI, would not have been possible if either party had demonstrated a specific desire to resell Centrex Plus. This finding, rather than establishing an impossible burden of proof, was one factor in the Commission’s conclusion that the evidence did not establish an adverse impact on the public interest by the withdrawal of Centrex Plus.

local competition, and the availability of alternative services to customers—that is the basis of the Commission's decision. AT&T and MCI do not identify evidence in the record to show that the Commission's findings are erroneous. On this record, we find that AT&T and MCI do not state adequate reasons to grant reconsideration.

### **The Petition of McLeod**

McLeod was not a party in the case and, in fact, has not been authorized to provide services in Idaho. Simultaneous to its filing of a Petition for Reconsideration in this case, McLeod filed an Application with the Commission for a Certificate of Public Convenience and Necessity. McLeod states in its Petition that it "plans to enter in designated Idaho markets in the near future by reselling Centrex Plus if the service is available from U S WEST." According to its Petition, McLeod currently provides local exchange services in Iowa and Illinois exclusively through resale of Centrex Plus services.

McLeod's Petition states that the Commission "may have been less than fully informed as to the critical elements of Centrex Plus service that makes its availability essential for a reseller to enter and compete by virtue of the fact that the two complaining parties, AT&T and MCI, do not have extensive experience reselling Centrex Plus service." McLeod Petition, p. 6. McLeod takes exception to specific findings made by the Commission and states that it could present evidence showing (1) the availability of Centrex Plus services for resale is essential to its ability to enter Idaho markets in the near future, (2) the withdrawal of Centrex Plus service creates a barrier to McLeod's entry into Idaho, (3) access to the local loop is not the only element of Centrex Plus service essential to McLeod's ability to provide competitive local exchange services in Idaho, and (4) a functionally equivalent alternative to Centrex Plus may not be available through unbundling.

In its objection to McLeod's Petition, U S WEST asserts that because McLeod failed to Petition to Intervene and participate in this case, its Petition for Reconsideration is untimely. U S WEST argues that "McLeod's effort to participate in this docket for the first time upon reconsideration plainly disrupts, creates prejudice and unduly broadens the issues." According to U S WEST, McLeod's request to participate as an active party is untimely under the Commission's Rules. U S WEST notes that McLeod's position is different than AT&T's and MCI's and thus McLeod seeks reconsideration of issues or arguments not presented to the Commission in the case. U S WEST states that "the reconsideration format does not allow the Company an adequate

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 22  
day of January 1997.

  
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RALPH NELSON, PRESIDENT

  
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MARSHA H. SMITH, COMMISSIONER

Commissioner Hansen was out of  
the office on this date.

\_\_\_\_\_  
DENNIS S. HANSEN, COMMISSIONER

ATTEST:

  
\_\_\_\_\_  
Myrna J. Walters  
Commission Secretary

bis/O-usws961.ws3

Office of the Secretary  
Service Date  
November 14, 1996

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF U S WEST ) CASE NO. USW-S-96-1**  
**COMMUNICATIONS, INC.'S FILING OF )**  
**TARIFF ADVICE NO. 96-03-SC )**  
**ORDER NO. 26677**

On February 5, 1996, U S WEST Communications (U S WEST) filed Tariff Advice No. 96-03-SC to restrict the availability of its Centrex Plus service in southern Idaho effective February 20, 1996. Centrex Plus services are central office-based services that provide internal switching capabilities to business customers. U S WEST proposed to withdraw the general availability of Centrex Plus and limit the service to existing customers through the year 2005. The Commission subsequently received formal complaints from MCI Telecommunications, Inc. (MCI) and AT&T Communications of the Mountain States, Inc. (AT&T) regarding U S WEST's withdrawal and grandfathering of Centrex Plus.

On February 21, 1996, the Commission issued Order No. 26336 suspending the tariff advice filed by U S WEST. The Commission noted that "fair questions are raised by U S WEST's tariff filings and the complaints filed by the various companies regarding the Commission's authority in these matters," and decided to "first consider and determine whether and to what extent it has jurisdiction to address the issues raised by the filings." Order No. 26336 at pp. 2-3. Following oral argument and a review of legal briefs regarding the Commission's jurisdiction, the Commission issued Order No. 26452 concluding it had jurisdiction to receive evidence to determine whether Centrex Plus is subject to Commission review under *Idaho Code* § 62-605(5) and to hear the complaints of MCI and AT&T. Order No. 26452 established a hearing for August 27, 1996.

Order No. 25452 did not definitively decide the jurisdiction issue. Instead, the Commission in that Order concluded it could convene a hearing to obtain facts necessary to determine the issue. The question of the Commission's authority over Centrex Plus arises because Centrex Plus is a deregulated telecommunications service under the provisions of Title 62, *Idaho Code*. The Idaho Telecommunications Act of 1988 gives a local exchange company (LEC) an election to have all of its telecommunication services regulated by the Commission under *Idaho*

Code, Title 61 or, alternatively, to remove its nonbasic telecommunication services from traditional Title 61 regulation and have them subject to the provisions of Title 62. U S WEST removed its nonbasic services from Title 61 regulation in March 1989. See Order No. 22416 in Case No. MTB-T-89-1.

The election to remove telecommunications services from Title 61 regulation does not forever remove them from the Commission's jurisdiction. Commission authority to review the availability of Title 62 services is found in *Idaho Code* § 65-605(5). Section 62-605(5) states:

For any telecommunication service which was subject, on the effective date [July 1, 1988] of this act, to title 61, Idaho Code, and which at the election of the telephone corporation became subject to this chapter, the commission shall have continuing authority to review the quality of such service; its general availability, and terms and conditions under which it is offered. Upon complaint to the commission and after notice to the telephone corporation providing such service and hearing, the commission finds that the quality, general availability or terms and conditions for such service are adverse to the public interest, the commission shall have authority to negotiate or require changes in how such telecommunication services are provided. In addition, if the commission finds that such corrective action is inadequate, it shall have the authority to require that such telecommunication services be subject to the requirements of title 61, Idaho Code, rather than the provisions of this chapter.

By the terms of this Section, the Commission's jurisdiction over Title 62 services depends on a preliminary factual determination that the particular service was regulated under Title 61 prior to July 1, 1988. The Commission concluded in Order No. 26452 that Section 62-605(5) authorized a hearing for the Commission to receive evidence relating to the threshold jurisdiction question, i.e., whether Centrex Plus is a telecommunication service that was regulated prior to July 1, 1988. If so, the Commission is authorized to determine, based on the evidence presented, whether the quality, general availability and terms and conditions of Centrex Plus are adverse to the public interest. In this case it is the attempt by U S WEST to withdraw Centrex Plus, making it no longer generally available, that is challenged by MCI and AT&T.

The initial determination for the Commission under Section 62-605(5) is whether Centrex Plus was available as of July 1, 1988, making it previously regulated under Title 61. U S WEST established that it notified the Commission on December 20, 1991 with a tariff filing, Transmittal No. 91-23-SC, that Centrex Plus was available as a new service. Tr. p. 176. AT&T and MCI did

not dispute that the particular product called Centrex Plus was first introduced in 1991, but contended that Centrex Plus was similar to, and was thus merely a continuation of predecessor products that were available in 1988. Tr. p. 8; 60-61. The Complainants presented evidence to demonstrate the similarity of Centrex Plus and the products it replaced. AT&T witness John Blake testified that "Centrex is nothing more than loop dial tone, central office functionalities, partitioning of the switch NARS in various forms over a number of years starting about 30 years ago." Tr. p. 20. MCI witness Bennet testified that "while Centrex Plus may be somewhat different from previous versions of Centrex, the basic core of Centrex Plus is the same as the original Centrex service." Tr. p. 61. U S WEST acknowledged that Centrex Plus is a "similar service" to Centron Custom, the service it replaced, but argued that "Centrex Plus was a new product separate and distinct from Centron Custom." Tr. p. 178-79.

After reviewing the record, we initially determine but do not finally decide that Centrex Plus is subject to Commission review under Section 62-605(5). The record is undisputed that Centrex Plus is a service similar to its predecessor and is intended for the same class of customers. Although the particular features have been enhanced over the years, the Centrex family of services has always been a central office-based switching service for medium to large business customers using similar core elements that have remained unchanged since 1988. ✓

We need not finally determine, however, that Centrex Plus is the same service as Centron Custom that was subject to Title 61 regulation before July 1988. Under Section 62-605(5), the Commission's authority to "negotiate or require changes in how [Centrex Plus is] provided" depends upon a determination, following a complaint and hearing, that the withdrawal of Centrex Plus is adverse to the public interest. The complaining parties, in this case AT&T and MCI, have the burden of proof to establish the requisite detriment to the public interest. We cannot find on the record an adverse effect on the public interest sufficient to require remedial action by the Commission. } loss

Both AT&T and MCI witnesses presented testimony of the effect on the public interest of withdrawing Centrex Plus. AT&T and MCI testified that the availability of Centrex Plus for resale would assist competitors seeking entry to the local telecommunications market. According to Blake, "total service resale enables competition to establish a presence in the market and to begin to acquire customers." Tr. p. 8. Blake testified that "AT&T and other new entrants will desire to

purchase the elements from Centrex service to provide local exchange service. . . . The new entrant may choose to use the dedicated switch capabilities of Centrex service to serve a single customer or to use the same dedicated switch capabilities and the loops to serve multiple exchange customers."

Tr. p. 14.

MCI witness Bennett likewise testified that the withdrawal of Centrex Plus "is adverse to the public interest because it will delay the development of competition in the local market." Tr. p. 84. Bennett also stated that "Centrex Plus is an important service that will be a vital tool in the promotion of local competition." Tr. p. 69.

The critical component of Centrex Plus for resellers identified by MCI and AT&T is the "transmission service and facilities necessary for the connection between the customers' premises and the local network switching facility," often called the local loop. Tr. p. 9. AT&T witness Blake testified that it is U S WEST's control of the local loop that makes it the sole supplier of Centrex service. *Id.* Likewise, Bennett testified that it is "the local transport or local exchange service portion of Centrex Plus," which is available only from U S WEST, that gives U S WEST a monopoly over the service. Tr. p. 56. Thus, according to MCI and AT&T, it is the availability of the local loop portion of Centrex Plus that is essential to the development of competition in the local market.

In response, U S WEST witness Karen Baird testified that Centrex Plus is not essential to competition in the local market because competitors will have access to U S WEST's "local transport function" as a result of the federal Telecommunications Act of 1996 (Telecom Act). Tr. p. 189. Baird testified that this function will be available to competitors because the Telecom Act requires U S WEST to unbundle its products (provide separate wholesale prices for separate functions) and make available its unbundled loop and other products to competitors. Tr. p. 189.

MCI agreed that "once the U S WEST network is unbundled and there are interconnection agreements available," competitors will have alternatives to duplicate the features and functionalities of Centrex Plus. Tr. p. 91. Thus MCI's concern of delay in the emergence of competition is only the delay that occurs until alternatives are available through unbundling. Tr. p. 96. Bennett was not able to say, however, whether MCI would enter the local market in Idaho as a Centrex Plus reseller within the next 10 months. Tr. p. 97. When AT&T witness Blake was asked whether the Centrex features will be available to AT&T through unbundling as required by the Act,

he responded "I do not know the answer to that," because he was not part of the negotiation process in Idaho. Tr. p. 31. When pressed, Blake reiterated that he did not know whether the Centrex Plus components would be available when U S WEST's services are unbundled and available for resale. Tr. p. 32. Blake also testified that he did not know whether AT&T desired to resell Centrex Plus in Idaho. Tr. p. 33.

It is undisputed on the record that the federal law requires U S WEST to unbundle its products and that Centrex Plus features will be available to AT&T and MCI when U S WEST's services are unbundled and available to competitors on a resale basis. The Act provides a specific process and timeline, some of which is under the control of potential competitors, for an incumbent LEC to provide resale of its products. Neither AT&T or MCI presented evidence of a present need to have Centrex Plus available for a single customer of theirs. The testimony was of a theoretical, anticompetitive effect of withdrawing Centrex Plus, rather than actual impairment to specific attempts by MCI or AT&T to provide service. Nor is there evidence that Centrex Plus withdrawal will have a permanent effect on the offering of competitive local services. On this record, we cannot find that the withdrawal of Centrex Plus is adverse to the public interest.

Evidence was also presented of possible adverse effects on customers if Centrex Plus is withdrawn. For example, Bennett testified that new retail customers, unable to purchase Centrex Plus, could be forced "to purchase costly and, possibly unnecessary, customer premise equipment. It could also delay some retail companies from even starting business, which could have a trickle down effect on other companies, consumers and the general economy of Idaho." Tr. p. 84. However, Baird testified that only 188 customers subscribe to Centrex Plus service, although there are in excess of 30,000 small business customers in Idaho. Tr. p. 244. According to Baird, most businesses purchase an alternative service, such as customized call management services, rather than Centrex Plus. *Id.* The record also indicates that the purchase or lease of private branch exchange (PBX), or customer premises, equipment is an alternative to Centrex Plus. Tr. p. 194.

The record does not support a finding that the withdrawal of Centrex Plus is harmful to customers. The relatively low number of customers using the service will be protected by the grandfathering provision to enable them to obtain the service through the year 2005. Potential new customers have alternative services available, as evidenced by the overwhelming number of business customers that decline to purchase Centrex Plus. Because we cannot find facts to conclude that the

withdrawal of Centrex Plus is adverse to customers and thus to the public interest, U S WEST is free to withdraw the service subject, however, to provisions of the Telecom Act.

The Complainants presented testimony that U S WEST's withdrawal of Centrex Plus violates provisions of the Telecom Act. Section 251(b) of the Act imposes on LECs a duty to not prohibit and not impose unreasonable or discriminatory conditions or limitations on the resale of their telecommunications services. Moreover, Section 251(e)(4) requires LECs to offer for resale telecommunications services they provide at retail to subscribers, and to not impose discriminatory limitations on the resale of such services. AT&T and MCI contend U S WEST's attempted withdrawal of Centrex Plus violates both provisions of the Telecom Act, and that the Commission has jurisdiction to enforce those provisions of the Act.

After the first testimony was prefiled in this case, the Federal Communications Commission (FCC) issued a First Report and Order implementing local competition provisions of the Telecom Act, FCC Docket No. 96-98 and 95-185. AT&T testified regarding the FCC's discussion of the effect of Section 251 of the Act on the ability of LECs to withdraw and grandfather a service. AT&T witness Blake quoted portions of paragraph 968 of the FCC Order, including FCC statements that "we are concerned that the incumbent LEC's ability to withdraw services may have anticompetitive effects where resellers are purchasing such services for resale in competition with the incumbent" and "many state commissions have rules regarding the withdrawal of retail services and have experience regulating such matters." Tr. p. 154. Blake concluded from the FCC Order that it is the responsibility of state commissions to rule on withdrawals of service, such withdrawals may have anticompetitive effects and, each state commission should investigate withdrawals when it receives complaints. Tr. p. 154.

We agree with AT&T and the FCC that it is for state commissions to determine whether withdrawal of a service is permissible. The Telecom Act does not by its terms preclude withdrawal of a service. Instead, the issue is for state commission "rules regarding withdrawal of retail service and ... experience regulating such matters." Nor are we presented with the situation for which the FCC expressed concern when a service is withdrawn — "where resellers are purchasing such services for resale in competition with the incumbent." Neither AT&T nor MCI currently resells Centrex Plus. In fact, the record does not demonstrate a specific, immediate desire of the Complainants to become resellers of Centrex Plus.

The language of the Telecom Act does require U S WEST, so long as it provides Centrex Plus to its grandfathered customers, to provide the service for resale to those customers. Section 251(c)(4) requires offering "for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers." We interpret this section to require, where a retail service is provided to grandfathered customers, that the LEC must make the service for those customers available to a reseller. Accordingly, U S WEST may withdraw Centrex Plus and provide it to existing customers until 2005, but the Company must also allow AT&T, MCI and other resellers an opportunity to purchase Centrex Plus for resale to those customers. This conclusion is consistent with the FCC's interpretation of Section 251(c)(4) regarding the withdrawal of retail service by an LEC. See FCC First Report and Order, CC Docket No. 96-98 and 95-185, paragraph 968.

Finally, AT&T and MCI in testimony and after the hearing directed our attention to decisions by other state commissions that prevent U S WEST's withdrawal of Centrex Plus in whole or in part in those states. For example, on October 21, 1996, AT&T filed a motion asking the Commission to take official notice of an order issued in September by the Utah Public Service Commission (UPSC), and on November 6, 1996 filed a similar motion regarding a North Dakota Public Service Commission order. The UPSC concluded, in light of U S WEST's continuation of service to existing customers, that "as long as [U S WEST] offers this service on a retail basis it must offer it for resale." UPSC Order at p. 6-7. This conclusion, based on Section 251(c)(4), is consistent with our holding in this case. Other results and findings of the Utah Order, as well as some of the decisions in other states, rest on individual state laws. The Commission's Rules of Procedure readily allow official notice of orders from sister states and, while they can be informative, this Commission ultimately must decide cases on the record presented in each case and the laws of this State. Idaho statutes limit the Commission's authority over Title 62 services, allowing the Commission to act only where evidence establishes an adverse effect to the public interest. This record does not convincingly demonstrate that U S WEST's withdrawal and grandfathering of Centrex Plus is adverse to the public interest. However, Section 251(c)(4) of the Telecom Act requires U S WEST "to offer for resale at wholesale rates" the service it provides to the existing customers.

**ORDER**

IT IS HEREBY ORDERED that the suspension of Tariff Advice No. 96-03-SC is rescinded. U S WEST may withdraw Centrex Plus in its southern Idaho service area and limit it to existing customers. However, U S WEST is directed, so long as Centrex Plus is available to existing customers, to make it available to resellers to provide the service to those same customers.

THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) or in interlocutory Orders previously issued in this Case No. USW-S-96-1 may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order or in interlocutory Orders previously issued in this Case No. USW-S-96-1. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See Idaho Code § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 13<sup>th</sup> day of November 1996.

  
RALPH NELSON, PRESIDENT

  
MARSHA H. SMITH, COMMISSIONER

  
DENNIS S. HANSEN, COMMISSIONER

ATTEST:

  
Myrna J. Walters  
Commission Secretary

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NOV 15 1996

DAVIS WRIGHT TREMAINE

ORDER NO. 26677