

BEFORE THE PUBLIC SERVICE COMMISSION OF WYOMING

IN THE MATTER OF THE APPLICATION)
OF ALL WEST COMMUNICATIONS, INC.,) DOCKET NO. 70013-TR-02-17
FOR APPROVAL OF ITS TSLRIC FILING) (RECORD NO. 7585)
AND TSLRIC BASED PRICES)

AFFIDAVIT OF BRYCE J. FREEMAN

I, Bryce J. Freeman, being first duly sworn, and in the presence of witnesses assembled, make the following statement regarding the above captioned proceeding:

1. I, Bryce J. Freeman, am the Administrator of the Wyoming Office of Consumer Advocate. I submitted pre-filed direct testimony in the above captioned proceeding as a member of the Consumer Advocate Staff on October 14, 2002 and appeared as an expert witness in this matter at the public hearing that was held on October 28, 2002. Subsequent to the hearing in this matter and prior to the issuance of the Commission's final order, on May 5, 2003 I was appointed to serve as the Administrator of the OCA on whose behalf this affidavit is filed. A substitution of parties was properly granted by the Commission to allow the OCA to replace the CAS as a party in this proceeding on
2. On November 24, 1997 (Docket Number 70013-TT-97-13), All West filed an application requesting a two-year waiver of the TSLRIC pricing mandate contained within W.S. § 37-15-402. In support of this request, the Company stated that it had not completed a TSLRIC study or identified a suitable surrogate. The Company further stated that it faced uncertainty in the regulatory environment in which it was operating and that the rate changes associated with TSLRIC compliance were not in the public interest. In its filing the Company stated that the waiver was necessary in order to preserve essential local service in accordance with W.S. § 37-15-402(c). CAS and the Company ultimately reached a stipulation in that matter which required the Company to file its first or next step toward TSLRIC compliance no later than July 1, 1999. The Company did not request a revenue increase in conjunction with its request for a waiver and in fact, as indicated in its filing, suggested that rates should remain unchanged in order to preserve essential local service.
3. On July 1, 1999, in spite of the terms of the stipulation in the earlier case, and in contravention of the Commission's order in that case, the Company filed an additional waiver request in lieu of the first step of its transition plan. In its application the Company again asserted that such a waiver was necessary in order to preserve the existence of essential local exchange service for its customers, and again it requested no price change or revenue increase. On August 11, 2000 the

Commission conditionally granted the Company's request and required, absent a change in the statutory provisions of the law, that the Company file TSLRIC compliant prices no later than May 1, 2001.

4. On July 5, 2001, after having received an extension of time, the Company made the filing required in the Commission's earlier order. However, the Commission Staff, after reviewing the filing, determined that it was incomplete in several respects and recommended that the Commission direct the Company to supplement it with certain enumerated information. On January 3, 2002, the Commission issued an Order Requiring the Filing of Additional Information, with regard to this matter. This Order contained a detailed list of information that the Company was required to file. However, on April 9, 2002, acting on a petition for reconsideration filed by the Company, the Commission reconsidered its earlier finding and declined to require the Company to submit the additional information specified in its earlier order. Instead it required the Company to submit for Commission examination, a complete TSLRIC filing no later than June 30, 2002.
5. On June 27, 2002 the Company submitted its TSLRIC filing in compliance with the Commission's earlier order. In its application the Company asserted that its proposed price changes, in aggregate, had no impact on the overall revenues of the Company. However, the Company provided no information regarding pro forma revenue and expense levels to support its contention. Subsequently on September 9, 2002, the Commission issued its procedural order requiring the Company to file direct testimony supporting its application including the items contained in the procedural order. Testimony filed by Company witness Vernile Prince on October 1, 2002 related to the Company's contention that TSLRIC based rates were not in the public interest. Kevin Kelly filed testimony on behalf of the Company on the same day related to the cost model and modeling assumptions used by the Company in conducting its surrogate TSLRIC study. Neither witness addressed the assertion of revenue neutrality nor did they provide information or data to support the assertion that the proposed prices resulted in a revenue neutral impact on the Company, nor did either witness provide testimony or evidence that a revenue increase was needed or justified at that time.
6. On October 28, 2002, the Commission held a public hearing in the above captioned matter. At the hearing the Company acknowledged that the filing would result in a revenue increase if the Commission adopted its proposed rates, to wit All West witness Kevin Kelly stated that; "I would say I would agree that with Mr. Freeman's calculation of the revenue increase, that's -- that's fair -- pretty close to what we calculated." (Transcript page 108, lines 1-4). I calculated the approximate revenue increase to be \$116,000 to \$117,000 annually, based on the CAS recommended rates, including the \$0.015 per minute CAS proposed access rate. (Transcript page 118, lines 1-5). However, the Company provided no evidence at the hearing indicating that such an increase was either justifiable or necessary nor was it able to quantify the impact on earnings or returns that would derive from the proposed revenue increase.

7. On May 7, 2003, the Commission entered its Memorandum Opinion, Findings of Fact, Conclusions of Law and Order in the above docketed proceeding. In its order the Commission found, inter alia, that the Company's proposed TSLRIC study surrogate and the resulting proposed prices complied with the relevant provisions of the Wyoming Telecommunications Act of 1995 and that they should be approved. The Commission also found that in order to preserve essential local exchange service for All West's Wyoming customers it was necessary to delay the effective date of the proposed rate changes until January 1, 2005, to wit the Commission found that; "The Commission is persuaded, based upon this evidence, that a waiver is appropriate in order to further the interest of preserving essential telecommunications services. To this end, the evidence offered by the Company's customers has succeeded where previous attempts, by the Company, to secure such a waiver have failed."
8. The Company now wishes, in spite of the substantial evidence of the proceedings described previously, and without the submission of additional compelling evidence, for the Commission to reconsider its decision in this proceeding. The Company asserts in its petition for rehearing that the rates granted by the Commission in this proceeding, which are the current rates, are "not remunerative and leave the Company with rates which are unreasonable." Yet the Company provides no basis in its petition or elsewhere, which would be useful to the Commission in determining what rates would be remunerative or reasonable. In its petition the Company also objects to the switched access rate adopted by the Commission in its final order arguing that "such testimony should not have been accepted by this Commission as there is no known case in this state in which a company has ever been forced to accept switched access rates of \$0.015 per minute. All companies with an access rate of this level have voluntarily agreed to the amount..." At best the additional evidence provided by the Company on this point is in conflict with the evidence of record and is neither substantial nor compelling. If the Company has compelling evidence related to the forward looking cost of its switched access service it should initiate a request to change the price of that service and it should base such a request on the TSLRIC it expects to incur in providing that service.
9. The OCA opposes the request for rehearing on the grounds that the Company has failed to show a basis upon which the Commission can reconsider its findings in this case. The Commission's final order in this case is well reasoned and based on the substantial weight of evidence. If the Company believes that its currently authorized rates are not remunerative and that it needs additional revenues in order to maintain safe, adequate and reliable service, then we invite the Company to file a request with the Commission that demonstrates that need. In the view of the OCA a filing of this sort would show the impact of the increase on revenues and returns and would clearly show the effect of any adjustments made by the Company to its book numbers; in short it would closely resemble a traditional rate base, rate of return rate case. Such a proceeding would be necessary to fully and fairly identify the necessary revenue increase given the fact that the Company has not achieved

TSLRIC compliance and it is not proposing to offset the local price increase with proportional reductions in access revenues. Further, if the Commission finds, subject to testimony and evidence presented at a public hearing, that a revenue increase is necessary and in the public interest, the OCA would not oppose the increase. The Company has made no such showing in its request for rehearing. Finally, if the Company believes that its need for additional revenue is urgent it has the right to petition the Commission for immediate interim rate relief, subject of course to later modification and possibly refund.

10. The OCA urges the Commission to deny the Company's request for rehearing based on the foregoing discussion. A rehearing of the Commission's order in this proceeding is not the proper venue for determining the need for additional revenues by the Company and the Company has presented no additional evidence in its petition for rehearing on which the Commission can reasonably entertain the request.

DATED this _____ day of _____, 2003.

Bryce J. Freeman, Administrator
Wyoming Office of Consumer Advocate