

Service Date: December 26, 1989

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER of the Application)
of MOUNTAIN STATES TELEPHONE AND) UTILITY DIVISION
TELEGRAPH (U S West Communications)
or Mountain Bell) for a General) DOCKET NO. 88.1.2
Rate Increase.)

IN THE MATTER of the Application)
of MOUNTAIN STATES TELEPHONE AND)
TELEPHONE (U S West Communications)
or Mountain Bell) for Authority to) DOCKET NO. 88.9.33
Incorporate an 800 Service Circuit)
Termination on a Centron 6 or 30 Service.)

IN THE MATTER of the Application)
of MOUNTAIN STATES TELEPHONE AND)
TELEPHONE (Mountain Bell or U S)
West Communications) for Authority) DOCKET NO. 88.8.44
to Incorporate Revised Directory)
Assistance Tariffs Into Its Tariff)
to State Alternative Terms of)
Service for Customers of Independ-) ORDER NO. 5354
ent Local Exchange Carriers.)
_____)

ORDER ON MOTIONS FOR RECONSIDERATION

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FINDINGS OF FACT

This Order is divided into four parts. Part A provides a chronological background of the proceedings in this Docket since the Public Service Commission (MPSC or Commission) issued its Final Order in Docket Nos. 88.1.2, et al. Parts B, C, and D address the Motions for Reconsideration (MFR) filed by U S West Communications (USWC or Company) and MCI Telecommunications Corp. (MCI) in this proceeding. Specifically, Part B addresses proprietary information and Materials Resources, Inc. Part C addresses USWC's motions on the Commission's decisions with respect to USWC's Cost of Service (COS). Although a brief synopsis of the Commission's decision is provided, the proprietary nature of some of this material causes the Commission's decision to be presented in Appendix A, which is proprietary (see FOF 16). Part D addresses the rate design related motions filed by USWC and MCI.

PART A

BACKGROUND

1. On May 1, 1989, the MPSC approved Order No. 5354d, which disposed of all matters pending in Docket Nos. 88.1.2, 88.9.33 and 88.8.44 with the exception of the affiliated interest issues discussed in Finding of Fact Nos. 26-30 of Order No. 5354d.

2. On May 12, 1989, USWC requested an extension of time to file Motions for Reconsideration until May 26, 1989. A Notice of Staff action was issued on May 12, 1989, granting all parties an extension to May 26, 1989, to file Motions for Reconsideration.

3. On May 25, 1989, MCI Telecommunications Corporation filed with the Commission an "Application for Rehearing, Reargument or Reconsideration of MCI Telecommunications Corporation" with respect to Order No. 5354d (Docket No. 88.1.2, et al.). On the same date

USWC requested an extension of time to file Motions for Reconsideration until June 2, 1989. A Notice of Staff Action was issued on May 26, 1989, granting all parties an extension to June 2, 1989 for such motions.

4. On May 31, 1989, a Notice of Staff Action was issued waiving the 10 day limitation for Commission action on a Motion for Reconsideration with respect to the "Application for Rehearing, Reargument or Reconsideration of MCI Telecommunications Corporation" filed by MCI.

5. On June 1, 1989, U S West Communication filed a Motion for Reconsideration in the instant docket. On June 7, 1989, a Notice of Staff Action was issued waiving the 10 day limitation for Commission action with respect to the USWC Motion for Reconsideration.

PART B

GENERAL

Proprietary Information

6. In its motion regarding the Commission's treatment of proprietary information, Finding of Fact (FOF) Nos. 37 through 41, USWC opposed nearly all of the new guidelines set forth therein. USWC's objections deal mainly with the efforts needed to comply with the new guidelines. The Commission finds merit in addressing several of the Company's concerns. These concerns were referenced by USWC per Finding No. 40 in Order No. 5354d. The Commission responds to each as follows:

FOF

- 40a The intent of this requirement was to insure that USWC's management was aware of the volume and content of materials that the Company's employees had labeled proprietary. This requirement will be changed so that the officer and/or a manager designated by that officer will be responsible to aid in the

resolution of questions regarding designation of proprietary materials. The Company will submit the name of this officer and/or the designated manager at the beginning of each proceeding.

- 40b The Commission submits that a person obviously must know why information is a trade secret in order to correctly declare the information to be proprietary. This requirement merely compels the Company to make known the justification behind the designation. Also, the Commission notes that similar types of materials may have similar reasons for being proprietary, but a generic or “canned” explanation will not suffice. If generic explanations were permitted, the situation could degenerate to the current status, which is intolerable.
- 40d The Commission agrees that the Company cannot know with absolute certainty the date that a trade secret will no longer be valuable to its competitors. In recognition of this fact, the Commission directed its staff to request from USWC a recommended downgrading procedure. The Company proposed a process which would establish a future “review milestone” date for each specific proprietary item. When the review milestone is reached the Company would reevaluate the item to determine if it still required protected status. The Company stated that this type of procedure is costly because it will require development and maintenance of a new database which would likely not be used for any other purpose. After careful consideration of this issue, the Commission agrees with USWC that the current downgrading procedures are adequate. Anyone wishing to have certain materials declassified should request downgrading from the Commission. The Company would then be allowed to respond to the request. A formal decision would then be rendered based on the facts available to the Commission. This procedure would be subject to the provisions of any applicable Protective Order issued by the Commission.
- 40e Bimonthly, as it is used here, means every other month. The Commission believes this to be a reasonable requirement. Such a listing could easily be maintained on any personal computer, requiring only periodic updates when new information is submitted. The list will help all parties receiving proprietary materials to control access to those materials. Additionally, the list can later be used by the Company and parties to the protective agreement to insure that all distributed proprietary materials have been returned at the conclusion of a proceeding. This requirement also exists for the benefit of those persons who are not parties to the protective agreement. It will give them some idea of the type of information which is being removed from public scrutiny. The Commission believes this is consistent with Montana sunshine requirements.
- 40f The main reason for this requirement and that contained in 40g is to insure that Montana Consumer Counsel (MCC) and the Commission have access to a complete and unaltered record at the conclusion of a rate proceeding. The Commission is willing to relax the requirements in 40f since the requirements in 40g will remain intact. The Company will be allowed five working days to

submit the requested information rather than the initial requirement of 24 hours.

- 40g The submission of microfiche is important because the integrity and completeness of the Commission's record for a particular Docket will be compromised without copies of all relevant materials. The Company will not be required to make its paper and microfiche filings simultaneously. Rather, microfiche filings must be made within 60 days of the date the proprietary materials are made part of the record in a Commission proceeding. In the instant Docket, the Company will have 60 days from the service date of this order to submit microfiche copies of all proprietary information, which is part of the record in this proceeding.

7. The Commission acknowledges that the new guidelines will result in additional efforts on USWC's behalf, but does not believe them to be unreasonable. For the most part, the new guidelines are designed to encourage the Company to actually assess and justify its claim that information is proprietary.

8. USWC also objected to the Commission's use of the word "cavalier" to describe the Company's approach toward designation of proprietary materials. Webster's Third New International Dictionary defines "cavalier" as "marked by lofty disregard of others' interests, rights, or feelings: given to airy dismissal of things worthy of attention." The Commission stands by its use of the word "cavalier" in Finding of Fact No. 41 of Order No. 5354d. The Commission is convinced that the existing procedure became unworkable because USWC's management paid little or no attention to the volume and content of materials that the Company filed under protected status.

9. In its Motion for Reconsideration USWC reinforced the Commission's belief when the Company inadvertently hit upon one of the main reasons which led the Commission to impose the new guidelines:

The PSC should understand that the concern of USWC employees to protect competitively sensitive materials is not reflective of a cavalier attitude, but rather represents a cautious approach by employees to an issue the company takes very

seriously. Every employee is required to acknowledge every year that he or she will protect confidential material from unauthorized disclosure at risk of discipline (up to dismissal) if the obligation is neglected. Employees are, as a result, cautious. (USWC Motion for Reconsideration, p. 7)

This Docket was a study of a procedure (designating materials as proprietary) that is out of control. The volume of material filed as proprietary by USWC in this Docket is enormous. As discussed in Order No. 5354d, the Company clearly does not apply enough discretion in determining what is or is not proprietary. The Company needs to address this serious problem and thus far has failed to do so. Employee caution is no excuse for USWC's failure to implement a tightly controlled process that will result in reasonable protection for materials which are, in fact, proprietary, while significantly reducing the volume of materials claimed to be proprietary in proceedings before this Commission. USWC seems unconcerned about the burdens this problem places on all parties, including the serious issue of baselessly removing more and more information from public scrutiny.

Materials Resources Inc. (MRI)

10. USWC objected to the Commission's characterization of MRI as a "for profit" corporation. USWC holds that MRI's billings to the Company include only a cost of money, not a profit margin. The Commission finds this USWC play on words to be absurd. The cost of money for any business is comprised of the costs of its debt and equity. Assuming all other costs of business are met, profit is automatically generated when a cost of equity is paid.

PART C

COST OF SERVICE

11. The Following summarizes four of the issues addressed in USWC's motions on Cost of Service (COS).

12. USWC's Replacement versus Avoidable Costs USWC's first COS motion regards the merit of the Company's COS theory versus an avoided cost perspective. USWC's motion on this COS issue suggests, but does not request, the Commission staff become familiar with the Company's Regional Integrated Network Cost Analysis Program (RINCAP) cost model (see TR 876-877) before the Commission concludes all COS studies be redone. The motion also notes USWC is conducive to any reasonable method that allows the "parties" to discuss contested economic theories.

13. USWC's On- versus Off-Peak Costs USWC's discussion of this issue makes no explicit request but rather proposes the Commission defer any broad cost theory endorsement until such time as consumer reactions are known. USWC again suggests its RINCAP model be discussed before the Commission requires revisions to existing cost studies.

14. USWC's Real versus Nominal Carrying Charges This motion by USWC makes no explicit request of the Commission, but rather states that the issue has not been exhaustively debated.

15. USWC's Treatment of Common Costs As with the prior three COS issues, USWC did not submit an explicit request to the Commission on common costs, but rather holds that further discussions are needed.

Commission Decision: COS

16. The Commission reaffirms its Order No. 5354d finding that USWC's cost of service studies are unacceptable, due to the specific cost of service issues listed in Finding No. 57 of Order No. 5354d, with augmentation to the common cost issue in this Order. However, due to the proprietary nature of these issues, the Commission's discussion and decision is provided in

Appendix A of this Order, which is attached hereto and incorporated herein by this reference. The security and dissemination of Appendix A are governed by the provisions of the Protective Order issued in this docket on January 20, 1988.

17. The balance of this part of the Order addresses USWC's procedural fairness concern and proposed procedural alternative to address the Commission's concerns with USWC's COS methods.

Procedural Fairness

18. USWC raises the issue of "procedural fairness" with respect to the Commission's findings and conclusions regarding the Company's cost of service studies. USWC MFR, pp. 17-19. First, USWC incorrectly characterizes the Commission's conclusions regarding the COS studies. USWC's motion states that the Order contains a "wholesale rejection" of the COS studies, and a directive/instruction to "fundamentally revise" and "proceed immediately to change" its COS studies. MFR, pp. 17, 24. The Commission's Order does not dictate any particular action by the Company in response to its findings. The Order simply discusses four problem areas in the COS studies and finds them "unacceptable" on that basis. See Order No. 5354d, Appendix A, pp. 1-2. The Order does not require any specific corrective action by the Company. Obviously, there is a wide spectrum of options available to the Company, ranging from resubmitting the same studies in the next rate case, to submitting one or more entirely new studies. The Commission consciously chose not to limit the Company's choices in this regard. Presumably, other parties may also submit COS studies or proposed methodologies in the next case. It is significant to note that, despite its findings, the Commission did not adopt an alternative COS methodology, and implemented many of the Company rate design pricing proposals in this docket.

19. Secondly, USWC contends that it received inadequate notice of the problems in its COS studies, and the procedure utilized by the PSC was “fundamentally unfair.” USWC states:

USWC’s concern is that its evidence was not framed to address these points because it was unaware until the order was issued that these points were viewed as formal issues in the rate case. ... Neither the parties nor the PSC staff formally framed these issues during this proceeding -- instead, the PSC apparently defined the issues after the close of evidence, and found USWC’s evidence lacking. MFR, p. 18.

The Commission rejects these contentions for the following reasons.

20. USWC was fully aware that its COS studies were subject to review (in their entirety) in this proceeding. USWC’s initial application contained numerous distinct COS studies explicitly supporting USWC’s pricing proposals.¹ The COS studies were a major component of the Company’s rate application. A COS study is the underlying foundation for any pricing proposal in a utility rate design case. The probity and soundness of the COS studies were therefore inherent issues in USWC’s rate design filing.² Furthermore, whenever a utility files a request with the Commission for a change in rates it carries the burden of demonstrating that present rates are unjust and unreasonable. See generally § 69-3-201, MCA. This constitutes implicit notice that the utility may be found to have failed to meet that burden on all items or on individual items that make up the requested rate design/pricing proposals.

21. MCC witness Allen Buckalew raised the issue of cost separability for tariffed and detariffed services in his pre-filed testimony (Exh. No. 14, p. 53). In a broad sense, this could impact most if not all of USWC’s COS studies. USWC’s COS studies were also the subject of two Commission staff audits and numerous data requests long before the hearing. At the hearing,

¹ USWC Exhibit No. 32-P, Tabs 1-22 (filed Jan. 22, 1988) contains 22 separate COS study “summaries” for various services, each consisting of several pages of technical description and study results. Tab 9 was later withdrawn. Nine “complete” studies were later filed in response to staff data request PSC DR-302.

² USWC’s Motion for Reconsideration appears to acknowledge this in stating: “This proceeding is the first comprehensive review of USWC’s Montana rate design in many years, and it will, in all likelihood, play an important role in rate designs for years to come.” MRF, p. 16

Mr. Buckalew addressed the problem of exclusion of common costs and embedded costs from the COS studies (TR pp. 753-755). And, USWC witness Robert Bowman addressed the on-peak/off-peak problem, replacement methodology, real versus nominal costs, and other aspects of the studies (TR pp. 869-883). See also USWC Exh. 37, pp. 5-7. In sum, USWC had every opportunity in its application, pre-filed testimony, data requests, at the hearing and in post-hearing briefs, to argue and/or buttress its position that the COS studies were acceptable.

22. USWC appears to argue that conformity across jurisdictions and throughout the telecommunications industry is a reason for the Commission to reconsider its conclusions:

USWC performs cost studies using common methodologies for all fourteen of its state regulatory jurisdictions. ...Further, USWC is of the impression that the vast bulk of the telecommunications industry utilizes studies that are prepared using similar economic concepts. MFR, p. 17.

The only apparent material contained in the record which touches upon this subject at all is found in Mr. Bowman's testimony:

Q: Are Incremental Costs something new for Mountain Bell?

A: Absolutely not. We have been using them for pricing information and submitting them in rate cases since the early 1970s.

USWC Exhibit No. 37, p. 7.

There is no apparent evidence in the record supporting the statements made in USWC's motion. Furthermore, there is no evidence in the record regarding any decisions made by other state commissions based upon "similar" COS studies. However, the Commission seriously questions the relevance of such information; since regardless of other state decisions or the practices and methods of other telecommunications companies, this Commission is empowered and reserves its rights to independently investigate and reach its own conclusions regarding such studies.

23. USWC appears to express some surprise at the economic concepts applied by the Commission to its COS studies. MFR, p. 17. The Commission notes that none of the COS issues addressed in USWC's Motion are new to the Commission, or presumably to any regulator or regulated company which faces cost and pricing issues. These same issues have been extensively debated before this Commission in the area of gas and electric regulation. The Commission may apply such experience, to the extent it deems appropriate, when evaluating the underlying economic basis for USWC's COS studies. See § 2-4-612(7), MCA.

24. Lastly, USWC "asks the PSC to note that the record material supporting its findings regarding 'sound economic theory' is virtually nonexistent." MFR, pp. 18-19. The Commission first emphasizes that the record in this docket contains an abundance of factual material supporting its findings. See generally Order No. 5354d, Appendix A. However, USWC's comment raises the additional question of whether economic theories must be formally admitted as evidence, to support a Commission decision. The Commission notes that USWC has failed to present any legal authority supporting a contention that economic theories must be contained on an administrative record. It is important to distinguish between facts, conclusions, and the analytical and reasoning tools or processes used by the Commission in bridging the gap between bare facts and Commission conclusions. Section 2-4-612(7), MCA, states that "The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of evidence." Economic theory is within the Commission's "experience, technical competence and specialized knowledge," used to evaluate evidence and reason to a conclusion. Certainly, a large part of the Commission's "specialized knowledge" regarding economic theory resides with

its staff.³ When the Commission reviews the evidentiary record in a rate case and applies its experience and the specialized knowledge of its staff in the field of economics, it is simply performing the task necessary for reasoned decision making. USWC does not contend that the underlying facts regarding the nature of its COS studies are not a part of the record. As noted above, the Commission's factual findings regarding the COS studies are abundantly supported by evidence in the record. If USWC thought the factual record was incomplete or inaccurate in any respect, it could have requested rehearing before the Commission for receipt of additional evidence. USWC has not requested a rehearing. The Commission finds it incongruous that USWC argues that if it had adequate notice prior to the hearing it would have presented additional evidence, but fails to avail itself of the opportunity to request admission of additional evidence through rehearing. Instead of questioning the evidentiary basis, USWC is questioning the reasoning process utilized by the Commission to reach its conclusions on the COS studies. In this respect, the instant motion is the appropriate means by which USWC may question the Commission's decisions including its application of economic theory.⁴ However, it is inappropriate to assert that a party has the right to prior notice of the analytic tools used by the Commission in its deliberation process.

USWC Proposed Procedural Alternative

25. USWC proposes a "procedural alternative" to address the problems found in its COS studies, consisting of meetings with USWC, PSC staff, a "mutually respected facilitator," and

³ The legislature gave the Commission the power "to appoint the stenographers, inspectors, experts, and other persons whenever deemed expedient or necessary by said commission to the proper performance of its duties." § 69-1-109, MCA. Pursuant to this section, the commission employs three staff economists to advise it on economic theory pertinent to its rate design deliberations, a major part of which includes analysis of COS studies.

⁴ ARM 38.2.4807 provides: "If, after such motion for reconsideration is filed, the commission is of the opinion that the original order or decision is in any respect unjust or unwarranted, or should be changed, the commission may abrogate, change or modify the same."

any interested parties who wish to participate. The professed goal of such a process would be to reach a common understanding “embodied in an agreement to be presented to the PSC for its review and approval.” USWC asks the PSC to withdraw its findings pending the outcome of such proceedings. MFR pp. 23-27.

26. Before specifically addressing USWC’s request, some background comments are appropriate. The PSC staff traditionally functions in a strictly advisory capacity. Some of the duties of an advisory staff include reviewing filings before the Commission, auditing and investigating the books, records, activities and methods of public utilities, and evaluating their proposals in light of Montana law, Commission policies, traditional rules of ratemaking and economic theory. It is also staff’s responsibility to ensure that the record before the Commission is complete, and will provide the basis for a range of reasoned decisions. Finally, staff reviews with the Commission the various positions of the parties, other positions and conclusions that may be sustained by the record, and makes recommendations for the Commission to consider.

27. The Commission also notes that it closely adheres to the traditional contested case/adversarial process in its rate-making proceedings. As established by the Montana Administrative Procedure Act, parties formally appear before the Commission to present evidence, cross-examine witnesses and advocate their positions. See §§ 2-4-102(4) and 2-4-601 et seq., MCA. Commission staff is not a party to Commission proceedings. See ARM 38.2.601(n).

28. The Commission expresses the following objections to USWC’s suggested “Procedural Alternative.” First, implementation of USWC’s suggestion would blur the traditional distinctions between parties as advocates, PSC staff as advisers and the Commission itself as the decision-maker. Commission staff has been portrayed as an advocate by certain parties in recent

rate proceedings, while acting in its advisory role. See Docket No. 88.6.15, MPC Motion for Reconsideration, pp. 12-16 and Docket No. 88.11.53, MDU Post-hearing Brief, pp. 22-23. It is the policy of this Commission to adhere to the staff advisory model. USWC's suggestion envisions a negotiation process, the expressed goal of which would be to reach a formal agreement to be presented to the PSC for "review and approval." MFR pp. 24-25. This process would apparently involve Commission staff as an advocacy party in the negotiation process, and a signatory to the envisioned "agreement." This is entirely inconsistent with the role of staff in its traditional advisory capacity. See FOF 26 above. The Commission will not approve a process so blatantly contrary to the advisory staff model.

29. The Commission also expresses reservations about USWC's suggestion on the grounds that it would encourage participation in a negotiation process in place of the traditional contested case method for decision-making. The Commission notes with some concern the increasing trend in Montana toward settlement of rate cases. The Commission's statutory duties have been traditionally fulfilled through the contested case method. The adversarial system has historically proven its value as a very effective fact-finding tool for decision-makers. This is especially true in the complex field of utility regulation. To the extent that negotiation and settlement serves as a substitute for contested case proceedings, the Commission is concerned that the protections and advantages provided by the contested case method may be lost or eroded.

30. For the foregoing reasons, the Commission will deny USWC's "Procedural Alternative." However, this does not rule out Commission staff observation of discussions between parties, if invited. As discussed in Finding of Fact No. 26 above, Commission staff has a continuing duty to audit and investigate the operations, activities, and methods of public utilities. This obviously could include attendance at meetings, as well as further independent investigation

of the Company's COS studies. However, the Commission staff's role in this area will be limited to observation, investigation and comment in its advisory capacity for the Commission; staff will not participate as an advocate or party. And obviously, staff cannot bind the Commission in any way.

31. The Commission realizes that cost of service is a very complex area which may require a long period of intensive study and effort. Certainly, the Company may properly seek informal discussions with staff, within the framework outlined above, in an effort to make progress in this area and prepare for its next case. Except for the objections and reservations expressed above, it is the Commission's intent to allow utmost flexibility in the Company's options to address the problems found in its COS studies. The Commission hopes to encourage study and progress in this area by all interested parties.

PART D

Motions For Reconsideration On Rate Design

32. This part of the order is divided into two general sections, each of which addresses the motions made by USWC and MCI, respectively. Each parties' concerns are addressed as they appear in their motions, followed by the Commission's decision.

USWC

33. USWC made comments and/or requested reconsideration on 10 rate design issues. Each of these issues will be addressed as they appear in the USWC Motion For Reconsideration.

Imputation of Carrier Access Charges (CACs)

34. With regards to the method of imputing CACs, USWC notes that although AT&T and itself agree on the principle of imputation, the complexities involved in the issue should be

examined further before the Commission. USWC continues to highlight that imputation issues should continue to include the constraints listed in paragraph three of the USWC/AT&T stipulation. Those constraints are 1) USWC's Message Telecommunications Service (MTS) service restriction within the Local Access Transport Areas (LATAs); 2) USWC's designation as carrier for Montana independent telephone companies; 3) the relation between USWC's short-haul rates and Extended Area Service (EAS); and 4) the comparative regulatory status of USWC.

Commission Decision: Imputation of CACs

35. No Commission decision is necessary at this time; however, the Commission does recognize USWC concerns as possible issues in another proceeding involving CAC imputation.

LRIC Treatment for New Services

36. USWC is concerned with how the Commission will treat future tariff filings for new services given the Commission's lack of confidence in USWC's Long Run Incremental Cost (LRIC) methodology. USWC suggests that all future tariff filings be given interim approval until LRIC issues are resolved.

Commission Decision: LRIC Treatment for New Services

37. The Commission continues to find USWC's LRIC studies in this docket unacceptable for the same reasons outlined in Appendix A of Order No. 5354d and augmented in this Order (see Order No. 5354d, FOF 57). The Commission will deny USWC's suggestion that all future tariff filings be granted interim approval. Such a decision is beyond the scope of this docket. The Commission will judge the merits of future tariff filings on a case-by-case basis. Such judgments may include either final or interim approval.

MCC Detariffing Criteria

38. USWC seeks clarification of the Commission's use of one of Montana Consumer Counsel's (MCC) four detariffing criteria per Allen Buckalew's direct testimony (Order No. 5354d, FOF 270-271). This criterion says that "the detariffed services' costs should be separable from the cost of providing monopoly services." The Company also states that it finds the following Commission finding to be ambiguous: "The Commission finds merit in these criteria to the extent they are consistent with the decision-making criteria set forth in the Montana Telecommunications Act." Order No. 5354d, FOF 271, see MFR pp. 10-12.

39. USWC outlines two methods of regulatory reform available through the Montana Telecommunication Act (MTA), which USWC maintains were universally acknowledged at the writing of the MTA. These two methods consist of deregulation and detariffing which, according to USWC, are distinguished by the amount of information appearing on the filed tariff and treatment of associated investments, expenses and revenues. USWC contends that detariffing would result in reduced information (such as price) and deregulation would result in the absence of all information from the regulated tariffs and financial statements.

40. USWC alleges that the criteria proposed by MCC were not intended in the MTA nor shared by the legislature when the MTA was drafted. USWC holds that the Commission's language in findings 270 and 271 is ambiguous to the point of embracing deregulation and detariffing as one. USWC not only seeks clarification of the Commission's use of MCC criterion but asks the Commission to adhere to USWC's interpretation of the deregulation/detariffing distinction within the MTA.

Commission Decision: MCC Detariffing Criteria

41. The Commission's decision regarding USWC's request for 1) clarification of the Commission's finding that MCC's proposed criteria have merit to the extent that they are

consistent with the MTA and 2) that the Commission adopt USWC's interpretation of the deregulation/detariffing distinction within the MTA, are addressed in turn.

42. First, the Commission finds merit in clarifying its adoption of one of MCC's proposed detariffing criteria as it is consistent with the MTA. Specifically, the Commission finds merit in maintaining the ability to examine costs of detariffed services separately in order to maintain its regulatory oversight granted under the MTA. The Commission finds the MTA prohibition of cross-subsidization (§ 69-3-806, MCA) as the basis for this determination. Namely, the MTA states that the use of revenues earned or expenses incurred in conjunction with regulated services will not be used to subsidize services not tariffed. See § 69-3-806, MCA. This alone is sufficient for the Commission to find merit in the MCC cost separability criteria. Hence, in this instance, the Commission finds itself charged with the duty to regulate USWC's use of revenues and expenses associated with providing fully regulated services so that any use of these revenues and expenses will not subsidize any of USWC's detariffed services. The Commission would add that investments made for the purpose of providing detariffed and tariffed services would also be legitimate candidates for separate examination in order to ensure that detariffed services are not subsidized by fully regulated services.

43. Further, § 69-3-807(2)(d), MCA, states the Commission may "establish only maximum rates [price ceiling], only minimum rates [floor] , or permissible price ranges as long as the minimum rate is cost compensatory." Section 69-3-807(3) (d), MCA, states that the Commission shall consider "the overall impact of the proposed terms and conditions on the continued availability of existing services at just and reasonable rates." The Commission therefore finds it necessary to maintain that costs for detariffed services remain separable in order to uphold these standards for considering and maintaining services as price detariffed.

44. In regards to ARM 38.5.2714, “Procedures to Require Re-Tariffing,” the Commission questions how redeterminations of a service’s detariffed status could be made in the absence of the ability to separately discern the costs, investments, revenues and expenses of detariffed and tariffed services. USWC defines detariffing to be “exemption from regulation of price levels” (USWC Exh. No. 2, p. 26). USWC also states, in the same exhibit, that it intends to retain regulatory oversight of such components as “maintained investments, revenue, and expenses for those service for which detariffing is proposed” (Order No. 5354d, FOF No. 112). If the Commission is to adopt such a standard as USWC has outlined, for treatment of detariffed services and continue to adhere to the statutory environment within which it must regulate detariffed services, the Commission finds it can do nothing other than require USWC or any other telecommunications company offering detariffed services under the MTA to maintain cost separability as a consideration of determining whether a service is a successful candidate for detariffed status.

45. The Commission continues to find merit in MCC’s proposed detariffing criteria as stated in FOF 270 and 271 of Order No. 5354d and may apply such criteria in future proceedings in which detariffing is at issue on a case-by-case basis. Further comment is not necessary at this time. Generally, however, the Commission agrees with USWC that there are important distinctions between deregulation and detariffing under the MTA.

Written Notice of Price Changes

46. USWC requests the Commission to soften its requirement that it report intended price changes for detariffed service 40 days in advance. USWC believes that 30 days prior notice is sufficient for customers to act on price increases. USWC notes that 40 days notice would delay

benefits due to price decreases. For price decreases, USWC requests the Commission require 10 days notice to the PSC only.

Commission Decision: Written Notice of Price Changes

47. The Commission finds merit in USWC's argument and softens its reporting requirements for price changes for USWC's price detariffed Custom Calling services. The Commission finds 30 days public notice prior to price increases, and 10 days notice to the Commission only prior to price decreases, sufficient for detariffed Custom Calling services. All reporting requirements detailed in Finding No. 273 (Order No. 5354d) will remain in effect.

Marketing Analysis for Detariffed Services

48. USWC contends that the Commission's marketing analysis requirement for detariffed services (Order No. 5354d, FOF 275) imposes several practical problems. Such problems relate to the fact that USWC performs no state specific marketing studies and that the studies requested are not made on a regular basis. USWC also alleges that while price detariffing results in reduced regulation, the Commission's directive results in increased regulation. USWC asks that this finding be withdrawn.

Commission Decision: Marketing Analysis for Detariffed Services

49. Upon reconsideration, the Commission finds its requirement of USWC to perform the marketing analysis as stated in Finding No. 275 of Order No. 5354d may be overly burdensome. However, the Commission cites MDU Docket No. 87.12.77 as an example in which it granted pricing flexibility and required data be filed by MDU (see Order No. 5379, FOF 74). In that docket, the Commission required MDU to file monthly reports of gas sales volumes and revenues for each of its flexibly priced customers in order to monitor MDU's marketing efforts.

In the instant docket, the Commission seeks to maintain sufficient information available to the public to provide interested parties the opportunity to petition the Commission for a redetermination of whether an alternative to detariffing is needed at any time in the future. See ARM 38.5.2714. The Commission will soften its requirement of USWC to perform the marketing analysis stated in FOF 275 (Order No. 5354d) in order to accomplish its initial intent. In lieu of the requirement stated in FOF 275 of the Final Order, the Commission finds USWC must file a report each year which summarizes the following data for each and every one of USWC individual services and service packages receiving price detariffed status in this docket: 1) Monthly billing determinants (i.e., number of subscribers); 2) The recurring and non-recurring prices USWC charges each month and 3) The revenues USWC generates each month. This data must be reflective of the actual business activity USWC incurred for each month during each reporting period, which must be consistent with the reporting period required by this Commission for annual reports. That is, since USWC has selected the calendar year option for its annual reports, these reports must coincide with USWC's annual report. However, if USWC changes its annual reporting to a fiscal year, the filing date and reports' contents must change accordingly. Monthly averages of annual business activity will not satisfy this reporting requirement. The Commission maintains the filing deadline noted in FOF 275 of Order No. 5354d for these reports.

Custom Calling Packages

50. Finding No. 281 restricts USWC from offering "packages" of detariffed services. USWC holds that it should be able to offer, on a detariffed basis, any custom calling package which does not include Three-Way Calling. Three-Way Calling was the only Custom Calling Service not granted price detariffing in Docket No. 88.1.2.

Commission Decision: Custom Calling Packages

51. The Commission finds reasonable and grants USWC's request with the following comment. The Commission's intent with Finding No. 281 was to prohibit USWC from making telecommunications "packages," containing both fully regulated services and price detariffed services, "implicitly" detariffed. However, the Commission by no means intended to prohibit USWC from offering "packages" of telecommunications services containing only price detariffed services as price detariffed. Hence, in the case of Custom Calling services, the Commission finds reasonable that all telecommunications "packages" containing Call Forwarding, Call Waiting and Speed Calling, alone or any combination, may be offered as price detariffed.

52. The Commission finds that roughly 12 of the Custom Calling packages or combinations currently tariffed meet the Commission's finding. USWC must file price lists and tariff sheets reflecting this decision.

Nonfacility Based Resellers

53. In FOF 284 (Order No. 5354) the Commission found that non-facility based resellers were not functionally equivalent competition for USWC's Message Telecommunications Service due to the lack of intraLATA equal access. USWC maintains that it held throughout the proceeding that resellers were its competitors in the intraLATA MTS market and notes that its major toll accounts continue to move to resellers. USWC requests the Commission to clarify its reasoning that resellers are not functionally competitive or withdraw the conclusion. USWC also adds that speed calling capable customer premise equipment (CPE) provides a virtual equivalent of 1+ intraLATA equal access.

Commission Decision: Nonfacility Based Resellers

54. At the outset, the Commission notes that there is no apparent evidence in the 88.1.2 record supporting USWC's claim that speed calling capable CPE provides a virtual equivalent of 1+ intraLATA equal access.

55. The Commission continues to maintain its position that nonfacility based resellers do not constitute functionally equivalent competition for USWC's intraLATA MTS. The Commission buttresses its decision by noting MCI argument that nonfacility based resellers are more USWC's customers than its "competitors." MCI apparently made this argument as an attempt to refute USWC's claim that resellers are its major competition in the intraLATA MTS markets. Specifically, MCI cites that the New Mexico State Corporation Commission found that resellers cannot produce their service independently, but must purchase access services from Local Exchange Carriers (LECs) (MCI Exh. No. 3B, p. 3). MCI also states that such providers are subject to price squeezes in cases where prices for access services used by resellers were not lowered when the LEC's alternative toll prices were lowered. Hence, the LEC could have adequate power to control the profitability of the reseller. At hearing, MCI showed that USWC considered resellers as its customers. In fact, MCI Exh. No. 1, a copy of an article titled "Account Team Tells MCI Story", [U S West Today Communications (Oct. 31, 1988)], states that MCI is more appropriately characterized as "...98 percent customer and maybe 2 percent competitor."

56. The Commission reaffirms its initial position that nonfacility based resellers provide no functionally equivalent competition for USWC's intraLATA MTS.

Time-Of-Day CACs

57. In the final Order, the Commission found merit in examining the benefits that time-of-day (TaD) CAC rate designs would have on detariffed MTS prices. USWC maintains that while this issue surfaced in the course of the docket, MCI refused further comment on peak/off-peak design and cost for carrier access. USWC merely “questions the desirability of incurring the expense...of addressing an issue that none of the participants in the industry seem to believe is worthwhile.” USWC MFR p. 15.

Commission Decision: Time-Of-Day CACs

58. The Commission continues to find merit in examining TOD CACs to the extent that such pricing might facilitate competition in the Montana intraLATA MTS market, if and when the Commission revisits the issue of intraLATA MTS competition. MCI stated:

With a Mountain Bell toll call imposing the same cost on the local exchange network as does an MCI call, it is clearly anti-competitive for Mountain Bell to charge MCI more for access than it charges its customers for an identical toll call. This occurs most frequently in the evening, night, and weekend discount periods. The result is that MCI and other interexchange carriers are paying a disproportionate share of the contribution for toll service (MCI Exh. No. 3A, p. 19, emphasis added)

59. The Commission notes that TOD CACs may also have merit to the extent that all MTS carriers would benefit (including USWC) if USWC were required to impute CACs. Hence, if TOD CACs are considered in MTS pricing, it could result in welfare gains for all providers and customers.

Reporting Requirements: Semi-Public Coin Phones

60. At FOF 303 (Order No. 5354d) the Commission directed USWC to file with the Commission a summary of billing invoices for semi-public coin telephone auxiliary equipment installations. USWC maintains that it is unclear why such reporting would be important to the

Commission and what benefit they would serve. Therefore, USWC asks the Commission to consider whether these reports are worthwhile.

Commission Decision: Reporting Requirements:

Semi-Public Coin Phones

61. The Commission finds reasonable USWC's comments and withdraws its directive made in FOF 303 (Order No. 5354d).

Extended Area Service

62. USWC holds that the Commission's reference to "public policy" in its denial of USWC's EAS proposal based on public policy and the goal of universal service is vague and seeks specificity in its meaning (Order No. 5354d, FOF 304). tJSWC holds that FOF 304 offers only a conclusion and seeks further explanation of the Commission's intended relation of EAS charges and public policy and the basis the Commission uses to arrive at its conclusion. USWC holds that it needs such explanation for its future rate planning process.

Commission Decision: Extended Area Service

63. Aside from COS based arguments, MCC lists four points upon which it grounds its general opposition to USWC's proposed EAS charge (Exh. No. MCC-14, pp. 38-39). The Commission finds merit in at least two of these arguments. First, MCC argues that customers affected by USWC's proposal are accustomed to the service they receive at a price which excludes the proposed \$.25 per month per accessible exchange charge. Second, since EAS is not an optional service in those exchanges which currently have EAS, those customers who do not make such calls would be forced to pay for a service they would not use. In addition to these arguments, the Commission notes that USWC projected that some repression (elastic) effects

would occur if its proposal were adopted. However, the Commission notes that the repression effects related to basic exchange services appear to be the direct results of customers disconnecting service. Therefore, since retaining as many customers as is reasonably possible on the public switched network promotes universal service, the Commission finds the projected results of USWC's EAS proposal contrary to the goal of universal service. The Commission's reference to USWC's EAS repression analysis above does not constitute general approval of the repression studies themselves (see Order No. 5354d, FOF 260). The Commission takes note of the study only to point out that if even the direction of the change (repression) is correct, it would be contrary to the goal of universal service. The other reasons expressed above clarify the Commission's public policy rationale for denying the proposal.

MCI

64. The following discusses MCI motions for reconsideration. MCI sought reconsideration on imputing CACs and implementing intraLATA equal access across Montana. Each of these issues are addressed in turn.

Imputation of CACs

65. While MCI agrees with the concept of requiring USWC to impute CACs in its MTS prices as set forth in the USWC/AT&T stipulation, it disagrees, in part, with the stipulated methodology. MCI requests the Commission to clarify the actions USWC is to pursue regarding CAC imputation. Specifically, MCI asks the Commission to require USWC to impute CAC by an amount equal to that which interexchange carriers pay on a service by service basis. MCI contends that such means will avoid possible cross-subsidization. MCI cites results of several proceedings in other states which support this request.

Commission Decision: Imputation of CACs

66. At this time the Commission will not order USWC to impute CACs. However, in the cases of forbearance of rate regulation that relate to toll services, an alternative method of gaining price flexibility for toll services under the MTA (see § 69-3-808, MCA), imputation becomes an issue. If USWC were allowed to price its toll services anywhere above cost, which the Commission remains uncertain of at this time, and costs for toll services were determined to include LRIC and imputed CACs as relevant costs, USWC would probably not be capable of anti-competitive pricing. However, if costs were to include LRIC and CACs as relevant costs and USWC priced below such a definition of cost, USWC might be able to engage in anti-competitive pricing.

67. For instance, in Docket No. 89.6.19, USWC's application for forbearance of rate regulation, the Commission put USWC on notice that "to the extent any (discounted toll) ... sales prices fall below the Commission's estimate of relevant marginal costs, the resulting loss shall be the burden of USWC" (Notice of Commission Action, dated June 27, 1989).

68. In that docket the Commission took action and intends to continue to take action in toll related forbearance cases to restrict USWC or any other regulated telecommunications provider from pricing below costs which may include CACs in its discounted prices.

69. To address the citations MCI makes to imputation orders in other states, the Commission recognizes such actions taken by the Washington Utilities and Transportation Commission and the Oregon Public Utility Commission and may consider these examples in future cases addressing CAC imputation.

IntraLATA Equal Access

70. MCI requests the Commission provide clarification with regards to its directives to USWC concerning equal access and specifically 1+ intraLATA presubscription. Further, since the Commission found merit in MCI contention that the lack of complete equal access in Montana reduced potential competition, MCI requests the Commission to open a docket to order the implementation of intraLATA equal access across Montana. MCI cites Iowa as a state in which 1+ intraLATA presubscription has been implemented.

Commission Decision: IntraLATA Equal Access

71. The Commission finds the issue of intraLATA equal access arose in this docket in relation to USWC's application for price detariffing for its 100 largest MTS customers (e.g. Exh. No. MCI-3B, pp. 10-16). The Commission denied USWC's proposal based, in part, on the fact that since none of USWC's exchanges are equipped to provide intraLATA equal access, nonfacility based resellers are not functionally equivalent competition for USWC (Order No. 5354d, FOF 284). The Commission finds that since MCI raised the intraLATA equal access issue only in opposition to tJSWC's toll detariffing proposal and that the issue received only tertiary treatment in these proceedings, there is no need to pursue the issue further at this time. Moreover, the Commission questions the need to further address intraLATA equal access outside of the context of a toll detariffing proposal. At this time, the Commission denies MCI request that it open a docket to consider implementation of statewide intraLATA equal access. The Commission recognizes that it is charged with the duty of fostering a competitive telecommunications environment in Montana, but the Commission is hesitant to move in such a direction by requiring statewide intraLATA equal access if such a move would endanger the availability of universal basic telecommunications service at affordable rates (see § 69-3-802, MCA). Hence, the Commission would note that due to the complexities associated with

intraLATA equal access, including possible impacts on a local exchange company's revenues and the possible effects on basic exchange services (see also Order No. 5354d, FOF 249-251) examination of intraLATA equal access may best be addressed outside of a general rate case.

CONCLUSIONS OF LAW

1. USWC is a public utility offering regulated telecommunications services in the State of Montana. §§ 69-3-101 and 69-3-803, MCA. The Commission has authority to supervise, regulate and control public utilities. § 69-3-102, MCA.

2. The Commission properly exercises jurisdiction over USWC's Montana operations pursuant to Title 69, Chapter 3, MCA.

3. The MPSC has provided adequate public notice of all proceedings herein and an opportunity to be heard, to all interested parties in this docket. §§ 69-3-303, 69-3-104, and the Montana Administrative Procedure Act, Title 2, Chapter 4, MCA.

4. The PSC may consider motions for reconsideration of a Final Order pursuant to ARM 38.2.4807.

ORDER

1. USWC Motion to Reconsider the Commission's decision regarding proprietary information, written notice of price changes, marketing analysis for detariffed services, custom calling packages, semi-public coin phone reporting requirements, and EAS is partially GRANTED as described in Finding of Fact Nos. 6, 47, 49, 51, 52, and 63, above. Said Findings are hereby incorporated herein by this reference. All other Motions for Reconsideration submitted by USWC and MCI in this proceeding are DENIED.

2. All other motions or objections made in the course of this proceeding which are consistent with the findings and conclusions herein are granted; and those inconsistent are denied.

DONE AND DATED this 20th day of December, 1989, by a vote of 4 to 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

CLYDE JARVIS, Chairman

HOWARD L. ELLIS, Commissioner

WALLACE W. "WALLY" MERCER, Commissioner

DANNY OBERG, Commissioner

ATTEST:

Ann Peck
Commission Secretary

(SEAL)

NOTE: You may be entitled to judicial review of this matter. Judicial review may be obtained by filing a petition for review within thirty (30) days of the service of this order. § 2-4-702, MCA.

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER of the Application)
of MOUNTAIN STATES TELEPHONE AND) UTILITY DIVISION
TELEGRAPH (U S West Communications)
or Mountain Bell) for a General) DOCKET NO. 88.1.2
Rate Increase.)

IN THE MATTER of the Application)
of MOUNTAIN STATES TELEPHONE AND)
TELEPHONE (U S West Communications)
or Mountain Bell) for Authority to) DOCKET NO. 88.9.33
Incorporate an 800 Service Circuit)
Termination on a Centron 6 or 30 Service.)

IN THE MATTER of the Application)
of MOUNTAIN STATES TELEPHONE AND)
TELEPHONE (Mountain Bell or U S)
West Communications) for Authority) DOCKET NO. 88.8.44
to Incorporate Revised Directory)
Assistance Tariffs Into Its Tariff)
to State Alternative Terms of)
Service for Customers of Independ-) ORDER NO. 5354e
ent Local Exchange Carriers.)
_____)

APPENDIX A

PROPRIETARY

