

Service Date: May 19, 1992

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

* * * * *

IN THE MATTER of the Montana Public)	UTILITY DIVISION
Service Commission's Investigation)	
into the Regulatory Status of Other)	DOCKET NO. 88.11.49
Common Carriers providing Telecom-)	
munications Services.)	ORDER NO. 5548c

ORDER ON SECOND MOTIONS FOR RECONSIDERATION

PROCEDURAL BACKGROUND

On November 9, 1988 the Montana Public Service Commission (PSC) initiated Docket No. 88.11.49 to investigate the regulatory status of six firms: West/Marc Communications, MCI Telecommunications (MCI), U.S. Sprint Communications Company (Sprint), Touch America (TA), American Sharecom (AS) and Intermountain Digital Network (IDN). Initial comments were filed by the responding firms in January, 1989.

On April 24, 1990 AT&T Communications of the Mountain States, Inc. (AT&T) filed a Motion to join the Docket as a Respondent, requesting joint consideration by the Commission of its regulatory status. AT&T's Motion was granted by the PSC on May 7, 1990. The PSC also issued a Procedural Order on May 7, 1990.

On June 25, 1990 the PSC issued a Protective Order to accord proprietary treatment to information submitted by the parties claimed to be of a trade secret nature.

Following the submission of pre-filed testimony by the parties and discovery, a duly noticed public hearing was held from October 2, 1990 through October 4, 1990. Post-Hearing Briefs were submitted by the parties in November, 1990.

The PSC, issued a Proposed Order on August 2, 1991 (Order No. 5548). The parties filed exceptions and comments on the Proposed Order later in August, and oral argument on the Proposed Order was held before the PSC on September 23, 1991.

Following consideration of the exceptions, comments and oral argument, the PSC issued a Final Order on October 24, 1991 (Order No. 5548a).

On October 25, 1991 AT&T filed a Motion for Extension of Time to file a motion for reconsideration of Order No. 5548a pursuant to ARM 38.2.4806; and said Motion was granted for all parties. On November 15, 1991 AT&T and TA filed motions for reconsideration of Order No. 5548a.

On January 23, 1992 at a duly noticed public meeting (worksession) the PSC directed its staff to prepare an Order on Reconsideration granting in part the motions of AT&T and TA.

On January 31, 1992 MCI and Sprint filed a joint Motion requesting leave to file additional comments with the PSC, in response to the direction given to Commission Staff at the January 23 worksession. At a duly noticed worksession on February 6, 1992 the PSC voted to deny the MCI/Sprint Motion.

On February 21, 1992 the PSC issued its Order on Reconsideration (Order No. 5548b).

On March 16 and 17, 1992 the PSC received second motions for reconsideration from MCI, Sprint and AT&T, requesting PSC reconsideration of Order

No. 5548b. On March 30, 1992 TA filed a Reply Brief. Following consideration of those motions and briefs, including a public worksession held April 30, 1992, the PSC now issues this Order.

COMMISSION DECISION

The PSC hereby denies the second motions for reconsideration filed by AT&T, MCI and Sprint herein, on a procedural basis. The PSC will therefore not address the substantive issues raised in the motions in this Order (although most of the substantive issues have already been addressed in previous orders in this Docket). All findings and conclusions contained in Order No. 5548b are hereby affirmed.

The PSC policy, based upon an interpretation of the intent of its procedural rules, is that only one round of reconsideration of a final order is ordinarily allowed. See PSC Order No. 5340b, >> 10-14, pp. 3-4 in Docket No. 87.4.21, PSC Order No. 5051h in Docket No. 83.9.67, Notice of Commission Action served July 10, 1991 in Docket No. 90.8.51, and ARM 38.2.4806. This policy is intended to provide a procedural finality to the PSC decision-making process after one round of reconsideration. This also promotes administrative efficiency and economy. In this case, although not required by the Montana Administrative Procedure Act, the PSC issued a proposed order and considered comments, exceptions and oral argument thereon. As is evident from the procedural summary above, the PSC has carefully and diligently considered all arguments of the parties over a long period of time before reaching its final decisions in Order Nos. 5548a and 5548b. All parties have been given extensive and repeated opportunities to file comments and motions in this Docket. In view of the extensive procedural history of this Docket, the PSC holds that further reconsideration is not appropriate.

The PSC has on occasion, based upon extraordinary or very unusual circumstances, considered the substantive merits of second motions for reconsideration. See e.g. PSC Order No. 5051h in Docket No. 83.9.67. However, the PSC finds that there are no extraordinary or unusual circumstances present here which

justify full substantive consideration of the second motions for reconsideration filed by AT&T, MCI and Sprint.

AT&T in an "Addendum" to its second motion for reconsideration filed on March 23, 1992 requests that if its substantive motion is denied by the PSC, a sixty (60) extension be granted to comply with certain tariff format and filing requirements in Order No. 5548b (specifically, paragraphs 14-16 of Order No. 5548b). This limited request is reasonable and is granted.

CONCLUSIONS OF LAW

AT&T, U.S. Sprint, MCI, Touch America and American Sharecom are public utilities offering regulated telecommunications services in the State of Montana. §§ 69-3-101 and 69-3-803, MCA.

The PSC has the authority to supervise, regulate and control public utilities. § 69-3-102, MCA. The Commission properly exercises jurisdiction over the Montana operations of AT&T, Sprint, MCI, Touch America and American Sharecom.

The PSC has provided adequate public notice of all proceedings herein and an opportunity to be heard to all interested parties in this Docket. Montana Administrative Procedure Act, Title 2, Chapter 4, MCA.

The PSC has properly initiated and conducted this proceeding pursuant to the Montana Administrative Procedure Act and its regulatory powers. §§ 69-3-103 and 69-3-324, MCA, and ARM 38.5.2711(2).

ORDER

IT IS HEREBY ORDERED that:

1. The Second Motions for Reconsideration filed by AT&T, MCI and Sprint are DENIED.

2. AT&T, MCI, Sprint, TA and AS shall have sixty (60) days from the date of this Order (until July 17, 1992) to fully comply with Paragraphs 14-16 of Order No. 5548b.

Done and Dated this 18th day of May, 1992 by a vote of 2-1.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DANNY OBERG, Chairman
(Voting to Dissent)

WALLACE W. "WALLY" MERCER, Vice Chairman

JOHN B. DRISCOLL, Commissioner

ATTEST:

Ann Peck
Commission Secretary

(SEAL)

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

Service Date:

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

* * * * *

IN THE MATTER of the Montana Public)	UTILITY DIVISION
Service Commission's Investigation)	
into the Regulatory Status of Other)	DOCKET NO. 88.11.49
Common Carriers providing Telecom-)	
munications Services.)	ORDER NO. 5548c

DISSENT OF COMMISSIONER OBERG

"Hail to you gods,
 On that day of great reckoning.
 Behold me, I have come to you,
 Without sin, without guilt, without evil,
 Without a witness against me,
 Without one whom I have wronged.
 I am one pure of mouth, pure of hands."
 The Book of the Dead
 The Address to the Gods
 1700 - 1000 B.C.

If it were not for the fact that the Commission has left so many injured parties in its wake, the self righteous majority decision in this order would be amusing. This case has drug on literally for years and with countless twists and turns and broken countless procedural expectations and traditions. I, therefore, find it incredible that Commission procedure would be cited as the reason for denial of further debate on an order that I consider fatally flawed. Such logic escapes me.

Furthermore, I am amazed at the audacity of the order when I believe the Commission violated fair play and due process by including new direction in its first decision on motion for reconsideration for which there was no record or evidence. At the very least, the Commission should have considered and further debated those portions of the order dealing with the filing of price lists and tariff changes.

This order doesn't extend to the real issues as the denial of reconsideration on procedural grounds made any substantive discussion moot. This Commissioner feels particularly aggrieved about that because in the spirit of compromise, or perhaps temporary insanity, I departed from my consistent position in this order at issue from my position of advocating minimal, but equal regulation for all long distance carriers. I would have liked to have further debate on this issue so I could rectify my previous vote.

As it now stands I believe the regulation imposed on long distance carriers operating in this state is unjust, unduly burdensome, and bad public policy. The only saving grace is that this poor order seems appropriate for a docket which has reached new lows (highs?) in weak decision making.

For the record, this Commissioner believes that the toll market is robust and all customers are aware of their choices. Therefore, I would have supported granting

motions that would have resulted in minimal but equitable regulation for all carriers for the three year experimental period envisioned by the order.

In particular, I would have removed the requirement for maximum allowable rates, the flow through of access charges, and removed new tariff filing requirements.

I believe the Commission's order runs contrary to the public interest. The market is competitive and relaxed regulation would have recognized the power of the market to protect consumers and make new services and options available quickly. Supplying the Commission with price lists and advance notices of price changes would have been sufficient regulation.

DANNY OBERG, Commissioner