

Service Date: March 14, 1990

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

* * * * *

IN THE MATTER Of the Application)	
of U S West Communications for)	UTILITY DIVISION
Forbearance of Rate Regulation)	DOCKET NO. 90.3.18
RE: Credit Associates, Inc., et al.)	ORDER NO. 5464
)	

FINAL ORDER

FINDINGS OF FACT

1. On March 5, 1990, U S West Communications (USWC) filed an application with the Montana Public Service Commission (MPSC or Commission) requesting forbearance of rate regulation for the provision of IntraLATA Message Telecommunications Service (MTS) to Credit Associates, Inc., Statewide Recovery, Inc., Credit Bureau of Montana — Eastern Division, Credit Bureau of Montana — Central Division, and Innermountain Collections, pursuant to Section 69-3-808, MCA.

2. On March 13, 1990, at a duly noticed work session, the Commission denied USWC's forbearance application on the following grounds:

- a. The application fails to describe the party or parties offering similar alternative service to the customer as required by Section 69-3-08, MCA, and ARM 38.5.2715(1) (e).
- b. The application fails to include a description of the alternative service offered and the market area, as required by ARM 38.5.2715(1) (f).
- c. USWC has failed to satisfy its burden of establishing that a viable competitive offer exists, pursuant to ARM 38.5.2715(2).

A copy of the pertinent part of ARM 38.5.2715 is attached for reference.

3. The Commission finds that there is no evidence contained in the application upon which to conclude that intraLATA toll service is being offered to Credit Associates, Inc., et al., by parties other than USWC. The application also fails to provide any evidence that Credit Associates, Inc., et al., have issued requests for proposals to any parties other than USWC, or are interested in purchasing intraLATA toll from an alternate source.

4. The Commission also notes that the letter from David T. Scotson to Susan Stemple dated February 2, 1990, which was submitted with the application, is not included within the verification by Mr. Cooper. Since Section 69-3-808, MCA, clearly requires a verified application, said letter cannot technically be considered part of the company's application package, for purposes of considering whether the application is complete. In addition, said letter appears to be from Credit Associates, Inc., only, while the application also includes other customers - Statewide Recovery, Inc., Credit Bureau of Montana, and Innermountain Collections, at various locations.

5. The Commission would also note that in past forbearance cases dealing with similar service provisions, it had taken it upon itself to issue data requests to the parties described as offering similar service (see, eg, Order No. 5411a, Docket No. 89.5.12). In contrast, the Commission finds that such information should be provided by the applicant since the burden of proof that a viable competitive offer exists is on the applicant (ARM 38.5.2715(2)). Hence, all telecommunications providers regulated by this Commission seeking forbearance of rate regulation pursuant to Section 69-3-808, MCA, in the future are advised to be prepared to provide responses to data requests which verify the existence of a viable competitive offer from an alternative provider.

CONCLUSIONS OF LAW

1. USWC offers regulated telecommunications services in the state of Montana and is a public utility pursuant to Section 69-3-101, MCA. The Commission has authority to supervise, regulate and control public utilities. Section 69-3-102, MCA.

2. The application is incomplete, in that it fails to include the information required by Section 69-3-808 and ARM 38.5.2715 (1) (e) and (f).

3. The applicant has not established that a viable competitive offer exists in satisfaction of its burden pursuant to ARM 38.5.2715(2).

ORDER

USWC's application for forbearance of rate regulation of intraLATA long distance service to Credit Associates, Inc., Statewide Recovery, Inc., Credit Bureau of Montana - Eastern Division, Credit Bureau of Montana - Central Division, and Innersmountain Collections is hereby DENIED.

DONE AND DATED this 13th day of March, 1990, by a 4 - 0 vote.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

CLYDE JARVIS , Chairman

HOWARD L. ELLIS, Commissioner

WALLACE W. "WALLY" MERCER, Commissioner

JOHN B. DRISCOLL, Commissioner

ATTEST:

Ann Peck
Commission Secretary

(SEAL)

NOTE: Any interested party may request that the Commission reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2,4806, ARM,

38.5.2714 PUBLIC SERVICE REGULATION

extent that detariffed operations do not cover incremental costs the commission will not allow those costs to be recovered through the rates of regulated services. (History: Sec. 69-3-822, MCA; IMP, Sec. 69-3-807, MCA; NEW, 1986 MAR p. 807, Eff. 5/16/86.)

38.5.2714 PROCEDURES TO REQUIRE RE-TARIFFING (1) The commission retains the right to retariff. A determination that a service should be retariffed is dependent on the factors listed in 69-3-807(3) (a)-(e), MCA.

(2) Any interested party may petition the commission for a redetermination of whether an alternative to rate setting is appropriate. The burden of proof is on the party attempting to establish that the service should be retariffed. Such a request will be considered a complaint subject to the requirements of ARM 38.2.2101 through 38.2.2107.

(3) If the commission intends to reconsider whether alternatives to rate setting are appropriate, it shall notify the telecommunication provider and all those on the telecommunications mailing list. Any interested party may file written comments within 20 days of notification that the commission intends to reconsider whether alternatives to rate setting are appropriate. If there is no material factual question the commission may make its determination without a hearing. (History: Sec. 69-3-822, MCA; IMP, Sec. 69-3-807, MCA; NEW, 1986 MAR p. 805, Eff. 5/16/86.)

38.5.2715 FORBEARANCE (1) Any telecommunications provider may apply to the commission for forbearance from regulation. The commission shall determine if forbearing from regulation would facilitate competition. The application shall be verified and contain the following information:

- (a) the name and address of the applicant;
- (b) a description of the service to be offered and the facilities used to offer the service;
- (c) the name and address of the customer to be served;
- (d) the market area to be served;
- (e) the party or parties offering similar alternative service to the customer;
- (f) a description of the alternative service offered and the market area; and
- (g) the commission may require other information that is reasonably related to determine the existence of an alternative offer except information relating to the cost of providing the service.

(2) The commission's determination shall be based on the existence of a viable competitive offer. The telecommunications service provider seeking forbearance has the burden of establishing that a viable competitive offer exists.

(3) The commission shall approve or deny the application within ten days of receipt of the completed application. If the commission takes no action within ten days, the application is granted. The commission may by order defer action for up to five days. (History: Sec. 69—3—822, MCA; IMP, Sec. 69-3-808, MCA; NEW, 1986 MAR p. 807, Eff. 5/16/86.)

38.5.2716 FILING OF NEGOTIATED CONTRACT (1) After notification that forbearance is granted the telecommunications service provider may negotiate with a customer for the provision of the service without regard to its filed tariffs. Within ten days of reaching a final contract, or other evidence of the service to be provided, the telecommunications provider shall file:

- (a) A copy of the final contract;
- (b) The charges and conditions of service,

(2) If no contract is reached the telecommunications provider must notify the commission in writing. (History: Sec. 69-3-822, MCA; IMP, Sec. 69-3-808, MCA; NEW, 1986 MAR p. 807, Eff. 5/16/86.)

38.5.2717 BILLING (IS HEREBY REPEALED) (History: Sec. 69-3-822, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA; NEW, 1986 MAR p. 805, Eff. 5/16/86; REP, 1989 MAR p. 1515, Eff. 9/29/89.)

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