

Service Date: September 23, 1992

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)	UTILITY DIVISION
of U S WEST COMMUNICATIONS to)	
Offer Transparent Local Area)	DOCKET NO. 92.6.40
Network Service on a Deregulated)	
Basis.)	ORDER NO. 5651

FINAL ORDER

PROCEDURAL HISTORY

On June 12, 1992 U.S. West Communications (USWC) filed a "Request to Offer Transparent Local Area Network (LAN) Service on a Deregulated Basis" (or "Transparent LAN Service," hereinafter, TLS) with the Montana Public Service Commission (Commission) pursuant to ARM 38.5.2705 et seq. The application was served on the Commission Telecommunications service list.

On August 3, 1992 the Commission decided to set a hearing in this matter. A Notice of Hearing was served on August 5, 1992.

The formal hearing was held on August 26, 1992 in the Commission Hearing Room. USWC was the only party appearing at the hearing. Representatives of the Montana Consumer Counsel and the Department of Administration were present but did not participate.

DISCUSSION

The issue before the Commission is whether TLS constitutes "regulated telecommunications service" pursuant to Montana law. The Montana Telecommunications Act provides in pertinent part:

(3) "Regulated telecommunications service" means two-way switched, voice-grade access and transport of communications originating and terminating in this state and nonvoice-grade access and transport if intended to be converted to or from voice-grade access and transport. Regulated telecommunications service does not include the provision of terminal equipment used to originate or terminate such service, private telecommunications service, resale of telecommunications service, one-way transmission of television signals, cellular communication, or provision of radio paging or mobile radio services.

§69-3-803, MCA

Mr. Mike Williams, the USWC witness, testified in part that in his opinion TLS was not switched, not two-way service and not voice-grade; and therefore should be deregulated. The Commission does not accept Mr. Williams conclusions, but agrees for other reasons that the service can be offered on a deregulated basis.

The purpose of TLS service is the intercommunication of computers. There is no question that the net effect of this service is two-way communication; i.e. digitized information traveling at incredible speeds back and forth between computers or other end user equipment. Although perhaps not "switched" in the traditional engineering sense, the information is "addressed" for an intended destination, data is "routed," "some switching" occurs; and TLS has "the effect of two way intercommunication." See USWC Exhibit #1, pp. 8-9, 12, 14.

Although Mr. Williams testified that TLS cannot support voice grade communication, he stated on cross-examination that it is possible for the data transmitted by TLS to be converted to voice grade communication at each end of the transmission. See §69-3-803(3), MCA, supra.

Pursuant to §69-3-803(3), MCA, "regulated telecommunications service" does not include a service which is not "intended to be converted to or from voice-grade access and transport." (emphasis added) It was clear from the testimony at the hearing that TLS is solely intended for use as a data transmission service, not a voice communication service. It is on this basis that the Commission will approve the deregulation of TLS. If TLS is used for the transmission of voice communication it will be subject to regulation by this Commission.

CONCLUSIONS OF LAW

USWC is a public utility offering regulated telecommunications services in Montana and is subject to the regulatory jurisdiction of the Montana Public Service Commission. §§69-3-101 and 69-3-803, MCA.

The Montana Public Service Commission has primary jurisdiction to determine if a telecommunications service is subject to regulation under the Montana Telecommunications Act. §§69-3-801 et seq., MCA, and ARM 38.5.2707.

This proceeding was duly held pursuant to the Montana Administrative Procedure Act and the Commission's Procedural Rules, including ARM 38.5.2701 et seq. Adequate public notice and an opportunity to be heard was given to all interested parties.

"Regulated Telecommunications Services" means two-way switched, voice-grade access and transport of communications originating and terminating in this state and nonvoice-grade access and transport if intended to be converted to or from voice-grade access and transport. §69-3-803(3), MCA. The Commission finds that TLS is two-way in nature and is effectively a switched service. Although it is possible for the data transmitted by TLS to be converted to voice-grade at each end of the transmission, the service is not intended to be used for voice communication purposes. The Commission approves it as a deregulated service on the basis that it will not be used for voice communications.

ORDER

WHEREFORE, IT IS HEREBY ORDERED:

USWC's application to offer Transparent Local Area Network Service (TLS) on a deregulated basis is hereby APPROVED.

Done and Dated this 10th day of September, 1992 by a vote of 4-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DANNY OBERG, Chairman

BOB ANDERSON, Commissioner

JOHN B. DRISCOLL, Commissioner

TED C. MACY, Commissioner

ATTEST:

Ann Purcell
Acting 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 ARM 38.2.4806.