

Service Date: August 14, 2001

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

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IN THE MATTER of the Petition of	)	UTILITY DIVISION
Qwest Corporation f/k/a U S WEST	)	
Communications, Inc., and	)	DOCKET NO. D2000.1.11
Citizens Telecommunications Company of	)	
Montana Concerning the Sale of Certain	)	ORDER NO. 6240b
Telephone Exchanges.	)	

**FINAL ORDER**

**BACKGROUND**

1. On January 21, 2000, the Montana Public Service Commission (Commission) received an application for a Declaratory Ruling from U S West Communications, Inc. (Qwest Corporation acquired U S West, and now will be referred to as "Qwest") and Citizens Telecommunications Company of Montana (Citizens) (jointly, Applicants).

2. Applicants requested a ruling that the sale of certain telephone exchanges within the state of Montana to Citizens is not subject to the Commission's jurisdiction. However, the Commission already determined that it has authority over sales of the exchanges in its Declaratory Ruling in Docket No. 93.5.23 issued November 24, 1993.

3. Alternatively, Petitioners requested an order determining the Qwest's sale of the exchanges to Citizens to be in the public interest and allocating to the Qwest shareholders the entire gain Qwest realized on the sale of the exchanges, with none of the gain to the Qwest ratepayers in future cases. Applicants also requested that the Commission designate Citizens as an Eligible Telecommunications Carrier (ETC) pursuant to § 214 of the 1996 Telecommunications Act for the Exchanges and allow Qwest to relinquish its ETC designation for the Exchanges. Finally, Applicants requested that the Commission affirm that it does not object to the granting of any required study area waivers by the Federal Communications Commission (FCC) or to any reconfiguration of study area boundaries for the Exchanges.

4. Qwest provides local exchange and other telecommunications services within Montana regulated by the Commission pursuant to Title 69, MCA.

5. Citizens provides local exchange and telecommunications services in Troy, Libby and Eureka, Montana, as a subsidiary of Citizens Utilities Company, a Delaware corporation,

which does not directly provide telecommunications services in individual states. Citizens Utilities Company, a diversified, publicly-held holding company, provides services throughout the country through its Public Services Sector (electric, gas, water and wastewater) and Communications Sector (telecommunications). The Communications Sector subsidiaries provide local exchange and intraLATA communications services to approximately 1 million access lines in 13 states.

6. Citizens Utilities Company intended to expand the Communications Sector's operations, focus on providing local exchange telecommunications services to smaller and more rural communities, and sell its Public Service Sector's properties to provide long-term financing for purchasing telecommunications properties. Citizens Utilities Company entered into Purchase Agreements with GTE to purchase about 200,000 access lines in Arizona, California and Minnesota and 60,000 access lines in Nebraska.

7. On June 16, 1999, Qwest and Citizens Utilities Company entered into a series of purchase agreements covering properties in nine states, including Montana, with a total of about 530,000 access lines. Citizens Utilities Company has assigned to Citizens its rights under the Asset Purchase Agreement to acquire the Montana exchanges in Colstrip, Conrad, Cooke City, Cut Bank, East Glacier Park, Fairview, Forsyth, Shelby, St. Mary and West Glacier (jointly, the Exchanges). Citizens will acquire about 12,000 access lines served by these Exchanges.

8. The FCC will not approve Part 36 study area waivers unless the appropriate state regulatory agency states that it does not object to changes in the study area boundaries. Applicants requested that the Commission state in any order that it does not object to the FCC granting necessary study area waivers or object to any reconfiguration of study area boundaries for the Exchanges. Applicants also requested that a Commission order designate Citizens as an "Eligible Telecommunications Carrier" (ETC) for purposes of receiving federal Universal Service funding and allow Qwest to relinquish its ETC designation for the Exchanges.

9. By a letter to the FCC on December 21, 2000, the Commission has stated that it does not object to changes in the study area waivers.

10. As proposed in the Application, existing extended area service routes would not change. Citizens would assume Qwest's contractual obligation in the Exchanges and continue all customer services provided by Qwest, including 911 service. For a minimum of 6 months after

closing, Citizens would adopt end user intrastate tariffs materially similar to Qwest's intrastate tariffs in place for the Exchanges at the time of the closing. Citizens planned to enter into agreements with other inter-exchange carriers to assume the retail toll carrier role and obligations for end users presubscribed or defaulted to Qwest for intraLATA toll services. Before closing, Citizens hoped to reach interconnection agreements with the telecommunications service providers with interconnection agreements with Qwest in the Exchanges. If agreements were not yet reached, Citizens proposed on an interim basis to provide interconnection services pursuant to the terms of Qwest's approved interconnections agreements. Citizens intended to submit all interconnections agreements to the Commission for approval, pursuant to law.

11. As set forth in the Application, Citizens will provide telecommunications services in the Exchanges pursuant to the Commission's jurisdiction as provided in Title 69, Montana Code Annotated (MCA). At the closing date of the Sale and Purchase, Citizens will adopt the applicable Qwest rates and tariffs in effect for each of the Exchanges. Qwest states that the sale of any of its exchanges will be a partial liquidation of its business enterprise in Montana and not just a sale of some of its utility plant. Before selling, Qwest maintains that it must be assured through the Commission's issuance of a decision that the gain on the sale will be allocated to the Qwest shareholder.

12. The Commission issued Order No. 6240 on March 30, 2000, the initial Procedural Order for this Docket, and established a procedural schedule with testimony and discovery deadlines and a hearing date.

13. Parties indicated that they were close to an agreement and requested relief from filing testimony pursuant to Order No. 6240. On August 9, 2000, the Commission issued a Notice of Commission Action vacating the procedural schedule and directing parties to file a comprehensive stipulation on or before August 17, 2000 for consideration at the hearing on September 7, 2000. The Commission did not receive a stipulated agreement by the deadline. At its duly noticed work session on August 22, 2000, the Commission vacated the hearing date of September 7, 2000.

14. On October 6, 2000, the Information Services Division (ISD) of the state of Montana received a letter of agreement to certain terms from the Applicants provided that ISD

withdrew from Docket No. D2000.1.11. ISD understood that the agreement would be incorporated into the upcoming Stipulation.

15. At its duly noticed work session on December 4, 2000, the Commission directed the parties to the Stipulation to notify the Commission by December 12, 2000, whether the agreement with ISD is incorporated into the Docket as a separate Settlement Agreement. The Commission cautioned that if it is not part of the comprehensive Settlement Agreement, the Commission may revoke the withdrawal of ISD from these proceedings and reinstate the intervention, on its own motion or that of ISD. The Commission also directed Applicants and MCC, the parties to the Stipulation, to file Supplemental Testimony in support of the Stipulation on or before December 22, 2000. On or before January 5, 2001, Intervenors that are not parties to the Stipulation must file a Statement of Intentions, stating whether they intend to participate in the Docket and whether they want a discovery schedule and a date for filing testimony.

16. On November 17, 2000, Applicants Qwest and Citizens and Intervenor Montana Consumer Counsel (MCC) filed a Stipulation in this Docket with the Montana Public Service Commission (Commission or PSC). The Stipulation provided that a "fair and reasonable resolution of the issues" would be as follows:

- 1) The Commission declare that the proposed sale by Qwest to Citizens of the 10 exchanges listed in the Petition filed January 21, 2000, is in the public interest and that the Commission has no objection to the Federal Communications Commission's (FCC) granting Study Area waivers or to reconfiguration of Study Area boundaries for the exchanges;
- 2) The Commission designate Citizens as an Eligible Telecommunications Carrier (ETC) for the 10 exchanges and allow Qwest to relinquish its ETC designation for these exchanges;
- 3) Qwest will increase its reserve for accumulated depreciation in the State of Montana in the amount of \$3,000,000, and jurisdictional rates will not change in Montana to reflect this change, but the change in reserve for accumulated depreciation will be reflected prospectively in the next general Montana PSC rate case for Qwest's Montana operations; and

- 4) The Commission declare that, based on these facts and except as provided in the preceding paragraph, no portion of the gain should be allocated to Qwest ratepayers in future rate cases.

17. Following a series of duly noticed work sessions, the Commission ultimately required Intervenor that were not parties to the Stipulation to file a Statement of Intentions on or before January 5, 2001. 3 Rivers Telephone Cooperative, Inc., Mid-Rivers Telephone Cooperative, Inc., Northern Telephone Cooperative, Inc., and Range Telephone Cooperative, Inc., ("Joint Intervenor") filed a Statement of Intentions and Request for Extension of Time to Finalize Settlement.

18. Joint Intervenor submitted their Notice of Withdrawal on January 30, 2001, stating that the Joint Intervenor had satisfactorily addressed all issues related to their participation in this Docket, did not object to the Joint Petition filed by the Applicants, and withdrew their intervention. At its duly noticed work session on February 13, 2001, the Commission recognized the withdrawal of the Joint Intervenor and directed the scheduling of a hearing on the Stipulation of the Applicants and MCC.

19. The Commission conducted a technical public hearing on March 20, 2001 on the joint petition of Qwest Corporation and Citizens Telecommunications Company for approval of the sale of ten telephone exchanges within the state of Montana. The Commission also held public meetings in the East Glacier, Shelby and Forsyth, Montana for the convenience of the public, to explain and address the issues in the proposed sale/purchase.

20. On July 23, 2001 Citizens Telecommunications notified the Commission of its decision to terminate its agreement with Qwest concerning the acquisition of access lines in Montana. On July 31, 2001 Qwest Corporation filed a Notice of Withdrawal of Petition with the Commission. On August 7, 2001 the Commission voted (5-0) to close Docket D2000.1.11.

#### CONCLUSIONS OF LAW

1. The Commission has authority to supervise, regulate and control public utilities. § 69-3-102, MCA.
2. Qwest Corporation is a public utility offering regulated telecommunications services in the State of Montana, subject to the Commission's jurisdiction. § 69-3-101, MCA.

3. Citizens Telecommunications Company of Montana provides local exchange and telecommunications services in Troy, Libby and Eureka, Montana, as a subsidiary of Citizens Utilities Company, also subject to the Commission's jurisdiction. §§ 69-3-101 and -102, MCA.

4. The Commission has authority to do all things necessary and convenient in the exercise of its powers and to regulate the mode and manner of all investigations and hearings of public utilities and other parties before it. § 69-3-103, MCA.

5. The Commission has the authority under its general and supervisory powers to approve and condition the terms of a sale and transfer of utility assets and operations, based on the public interest and a determination that the purchaser is financially fit and capable of fulfilling the public utility obligations. The Commission's approval of the sale must include a determination that the rates will not increase directly as a result of the sale and that the service provided by the purchaser will continue at, or exceed, the level of service provided by the seller.

6. The Commission has provided adequate notice and an opportunity to be heard to all interested parties in this Docket, as required by the Montana Administrative Procedures Act, Title 2, Chapter 4, MCA.

7. The Commission has the authority to reject a portion of a Stipulation and approve the remainder of the agreements in the Stipulation if such action is consistent with the public interest based on the Commission's general and supervisory powers.

**ORDER**

WHEREFORE, THE COMMISSION ISSUES THE FOLLOWING ORDER:

Docket No. D2000.1.11 is hereby closed.

DONE AND DATED this 7th day of August, 2001, by a vote of 5 to 0\_.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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GARY FELAND, Chairman

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JAY STOVALL, Vice Chairman

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BOB ANDERSON, Commissioner

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MATT BRAINARD, Commissioner

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BOB ROWE, Commissioner

ATTEST:

Rhonda J. Simmons  
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.