

Service Date: December 6, 1996

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 Citizens Telecommunications Company )  
Pursuant to Section 252(e) of the ) DOCKET NO. D96.11.191  
Telecommunications Act of 1996 for )  
Approval of its Resale Agreement With ) ORDER NO. 5962  
U S WEST Communications, Inc. )

**AND**

IN THE MATTER OF the Application ) UTILITY DIVISION  
of Montana Communications )  
Pursuant to Section 252(e) of the )  
Telecommunications Act of 1996 for )  
Approval of its Resale Agreement With ) DOCKET NO. D96.11.198  
U S WEST Communications, Inc. )

**PROCEDURAL ORDER**

On November 18, 1996 and November 21, 1996, respectively Citizens Telecommunications Company (CTC) and Montana Communications (MC) filed applications with the Montana Public Service Commission (PSC or Commission) for approval of the resale agreements each has negotiated with U S WEST Communications, Inc. (U S WEST). Pursuant to §§ 252(e)(1) and (4) of the Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (Feb. 8, 1996) (the 1996 Act), parties are required to submit such agreements to the Commission and the Commission must act to approve or reject the agreements within 90 days of submission or the agreements are deemed approved.

The Commission may only reject these agreements which have been reached through voluntary negotiations if an agreement or portion thereof discriminates against a telecommunications carrier not a party to the agreement or the implementation of the agreement or portion thereof is not consistent with the public interest, convenience, and necessity. Section 252(e)(2)(A) of the 1996 Act. However, the Commission is not prohibited from enforcing other

requirements of Montana law in its review of these agreements, subject to § 253 of the 1996 Act, which refers to removal of barriers to entry. Section 252(e)(3) of the 1996 Act.

The Commission has delegated to Commission staff the duty to set the procedural schedule and issue the Procedural Order. The Commission has established a firm schedule in this Procedural Order. When the amendment does not alter the scheduled hearing date or otherwise delay the approval proceeding, the dates set forth in the procedural schedule may be reconsidered upon a showing of good cause. The Commission must render a final decision on the issues in this proceeding by February 16, 1996 and, thus, will not reconsider the date set for hearing except in extraordinary circumstances.

#### Introduction

CTC presently provides local exchange service in several Montana exchanges. The agreement submitted for approval would permit CTC to resell U S WEST local exchange services throughout Montana in exchanges presently served by U S WEST.<sup>1</sup> MC does not provide any local exchange service in Montana. The agreement submitted would permit MC to resell U S WEST local exchange services throughout Montana in exchanges presently served by U S WEST.<sup>2</sup> Resellers are presently exempted from regulation by the Montana Commission. *See* § 69-3-803(3), MCA.

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<sup>1</sup>The agreement provides for resale of U S WEST local exchange services in “Arizona, Idaho, Montana, New Mexico, Oregon, Utah and Washington, and such additional states as the Parties may mutually agree upon.

<sup>2</sup>The agreement provides that U S WEST will provide services to MC “within the state(s) of Montana, Washington, Oregon and Idaho and such additional states as the Parties may mutually agree upon.”

In a work session held December 3, 1996, the Commission voted to consolidate Docket Nos. D96.11.191 and D96.11.198. Docket No. D96.11.198 is hereby consolidated into Docket D96.11.191. Under the authority of ARM 38.2.2701-2702, this Procedural Order establishes the procedure to be followed in Docket No. D96.11.191 and Docket No. D96.11.198. This Order is effective immediately and remains effective until modified by the Commission.

#### Intervention and Participation

1. In this Order the term “parties” includes the Applicants, CTC and MC, U S WEST, and any permitted intervenors.
2. Other interested parties who have not been permitted to intervene may file limited comments according to the times set forth in the Procedural Schedule attached hereto as Attachment “A.” Such comments will be limited to the grounds for rejection set forth in § 252(e)(1)(A) of the 1996 Act.

#### Service and Filing

3. Copies of all pleadings, motions, discovery requests and responses, prefiled testimony, briefs and all other documents shall be filed with the Commission and served on all parties and other entities and individuals on the service list in this consolidated proceeding. Service upon the parties shall be upon the parties’ attorney of record and such other individuals as may be reasonably designated by the attorney of record. The parties may limit service of discovery responses to service on the party making the discovery request, the Commission, and parties specifically requesting service of discovery responses.
4. Filing by means of telephonic facsimile will not suffice for timely filing. Filing and service deadlines are the dates set for filing of the requisite number of paper copies in the offices of the Commission.
5. An original and seven (7) copies of all discovery must be filed with the Commission, and an original and eleven (11) copies of all other documents, except proprietary documents. Only one copy of proprietary documents shall be filed -- on yellow paper. The Commission may designate different forms of service for some parties on the service list as appropriate, at a later date (e.g., overnight mail, cover letter only, etc.).

Schedule

6. The deadlines for service and filing of documents in this proceeding (pursuant to the above requirements) and other pertinent dates, shall be those dates contained in Attachment “A” which is attached hereto and incorporated herein by this reference.

Discovery

7. The term "discovery" includes all forms of discovery authorized by the Montana Rules of Civil Procedure, as well as “data requests” (informal interrogatories).

8. The Commission directs all parties to prepare data requests according to the following guidelines:

(a) Parties must assign their data requests a request number (e.g., MDU-001). Request numbers must be consecutive regardless of the party to whom the request is directed (e.g., the PSC might direct PSC-001 through 008 to MDU, PSC-009 through 016 to MCC, and PSC-017 through 019 to MDU).

(b) All data requests must include at the beginning of each request a description of five words or less explaining the subject of the data request. Other identifying information, such as the witness to whom the request is submitted, exhibit number, page number, etc., may be included in addition to, but not in lieu of, the subject of the request. This requirement will help to identify all data requests and responses addressing a particular subject or group of subjects. Subject descriptions will obviously vary from one party to another. However, each party should attempt to keep descriptions consistent from one request to another.

(c) Multi-part requests may be used, each part denoted by a lower case letter (a, b, c, d and e). Requests must be limited to five parts (a-e). If additional parts are necessary, additional requests must be made. A single part request should be denoted by the request number only.

(d) Examples of acceptable data requests are as follows:

PSC-500 RE: Purchased Gas Contracts  
Witness - Burke, Page JBB-4, Lines 13-15.

Please provide the origination and expiration date for each contract.

PSC-501 RE: Bypass  
Witness - Johnson, Page DAJ-14, Lines 11-14.

- a. What risks of bypass would be avoided by the shareholders as a result of the Company's proposed treatment?
- b. What risks of bypass would be avoided by the ratepayers as a result of the Company's proposed treatment?

9. The party receiving the written discovery or data request has three calendar days from receipt to file any objections it has to the request(s). Notice of the objection shall be served upon the Commission and all parties (as provided in the paragraph above). The Commission may dispose of such objections by prompt ruling or may schedule argument. Failure to timely object will be a waiver of objections.

10. Any requesting party dissatisfied with the response to any written discovery or data request and desiring PSC action to compel, must serve its written objection(s) within three calendar days after receipt of such response (as provided in the paragraph above). The Commission may dispose of such objection(s) by prompt ruling, or may schedule argument. The Commission will act either to sustain or overrule the objection(s), and if sustaining, set a deadline for a satisfactory response.

11. Parties are encouraged to attempt to resolve all discovery disputes between themselves, before filing objections. All motions regarding discovery should contain a statement explaining the efforts taken to resolve the issue informally, and a photocopy or restatement of the requests and responses. Discovery motions which do not include a statement explaining the efforts taken to resolve the issue informally are subject to denial without substantive consideration of the merits. Discovery motions do not stop the filing requirement with the Commission; that is, any objectionable information must be filed with the Commission and may be designated as "special" proprietary information prior to the Commission's ruling on the merits of the objection. Such proprietary information shall not be available to the other parties unless the Commission overrules the objection. The Commission will consider the motion at the

earliest opportunity after giving notice and, if the motion is sustained, will return the information to the providing party.

12. Submission of written discovery after the deadline established will be allowed by leave of the PSC only. The PSC will not grant requests without a showing of good cause explaining why the request was not submitted within the time period allowed.

13. Unless excused by the PSC, failure by a party to answer data requests or other discovery from any party may result in: (a) action refusing to allow the failing party to support or oppose related claims; (b) action prohibiting introduction of related matters in evidence; (c) action striking pleadings, testimony or parts thereof; (d) action staying further proceedings until the request is satisfied; or (e) action dismissing the case, defense, proceeding or parts thereof.

14. Unless otherwise provided by this Order, PSC Rules or other PSC action, discovery procedures and requirements shall be governed by the applicable Montana Rules of Civil Procedure. *See* ARM 38.2.3301 through 38.2.3305.

#### Testimony and Evidence

15. The PSC contemplates a complete identification of issues before the hearing. The PSC will not permit introduction of new issues or data in new areas at the time of hearing.

16. At hearing, the PSC will admit into the record all prefiled direct, answer and rebuttal testimony upon motion of the proponent, without the necessity of the witness reading the testimony into the record. This testimony will be an exhibit and not otherwise entered into the transcript.

17. All proposed exhibits and prefiled written testimony shall be marked for the purpose of identification prior to the start of the hearing. Parties shall arrange in advance with the court reporter or at a prehearing conference, for the preferred manner of identifying exhibits.

18. When cross-examination is based on a document not previously filed with the Commission, copies of the document will be made available to the Commissioners, parties, and staff, unless good cause is shown why copies are not available. Parties introducing data requests or other discovery must have copies of each request and response available at the hearing for the court reporter, each Commissioner, the PSC staff, and all parties. This last requirement may be

waived if the documents to be introduced are bulky, or for other good cause, and if previous arrangements have been made with the PSC and all parties.

19. Parties may be permitted to present live rebuttal testimony only by leave of the PSC or presiding officer.

20. The Montana Rules of Evidence in effect at the time of the hearing will apply.

21. Any party to this proceeding responding to written discovery from any other party or the Commission shall have each person authorizing any response(s) present and available as a witness at the hearing to introduce the response(s) and be available for cross-examination.

Parties may waive objection(s) to introduction absent the author, and the right to cross-examine. Upon PSC approval of such parties' agreement to waiver, the person responding to data requests need not be present to testify and the responses may be introduced into the record. Written discovery and data responses will be introduced at hearing only pursuant to applicable rules of evidence and through an appropriate witness subject to cross-examination, or upon stipulation approved by the PSC (except, *see* Rule 32, M.R.Civ.P. regarding admission of depositions).

#### Prehearing Motions and Conferences

22. Motions by any party, including motions to strike prefiled testimony and motions concerning any procedural matter connected with this proceeding shall be raised at the earliest possible time. Prehearing motions shall be submitted on briefs, without oral argument, unless otherwise requested by a party and approved by the PSC. All parties are strongly encouraged to attempt to resolve procedural disputes informally.

23. The PSC may set prehearing conferences to discuss settlement of any issues in the proceeding, simplification of issues, possibility of obtaining admissions of fact and documents, distribution and marking of written testimony and exhibits prior to the hearing, and other procedural matters as may aid in the disposition of the proceeding.

24. Nothing in this order shall be construed to limit the legally established right of the PSC or its staff to inspect the books and accounts of U S WEST and other regulated utilities at any time.

Prehearing Memoranda

25. Each party and the Commission staff will serve a prehearing memorandum on the Commission and all formal parties in this proceeding on or before January 10, 1997, containing the following information:

- a. Each and every Data Response and all other exhibits that it intends to offer into evidence at the hearing;
- b. The name of the witness responsible for the Data Response or through which the exhibit will be offered; and
- c. The issue to which the Data Response or document is relevant.

In addition, all parties (but not the Commission staff) are required to include the following in their prehearing memoranda:

- d. A list of all issues, contested and uncontested;
- e. Witnesses the party will call to testify;
- f. A proposed order of witnesses (including whether each witness would simultaneously offer both direct and rebuttal testimony);
- g. A proposed order of cross-examination; and
- h. Identification and explanation of any special scheduling or witness sequence needs which a party requests to accommodate scheduling conflicts.

Amendment

26. The provisions of this Order may only be amended by PSC action, or Commission staff action pursuant to delegated authority. The PSC shall maintain continuing jurisdiction of the matters encompassed by this Order during the course of this proceeding.

DONE AND DATED this 3rd day of December, 1996 by delegation to Commission staff as the Order of the Montana Public Service Commission.

BY THE MONTANA PUBLIC SERVICE COMMISSION

NANCY MCCAFFREE, Chair  
DAVE FISHER, Vice Chair  
BOB ANDERSON, Commissioner  
DANNY OBERG, Commissioner  
BOB ROWE, Commissioner

ATTACHMENT "A"

Procedural Schedule

Docket Nos. D96.11.191 and D96.11.198, Order No. 5962

<u>Deadline*</u>	<u>Action</u>
December 11, 1996	Intervention Deadline; all Prefiled Testimony due.
December 20, 1996	Data Requests on Resale Agreements and Prefiled Testimony due.
January 3, 1997	Answers to December 20th Data Requests due.
January 10, 1997	Prehearing Memoranda due.
January 14, 1997	Pre-hearing Conference (tentative).
January 16, 1997	Hearing to Commence in Docket Nos. D96.11.191 and D96.11.198.
January 21, 1997	Post-hearing Briefs of parties and Comments of Non-Party Participants due.
February 14, 1997	Final Order due.

\*DEADLINES ARE RECEIPT DATES