

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 of)	UTILITY DIVISION
U S West Communications, Inc. To)	
Increase the Rates for Residential Local)	DOCKET NO. D96.8.131
Exchange Services to Reflect an Increase)	
In Depreciation Rates.)	ORDER NO. 5937a

PROCEDURAL ORDER

The Montana Public Service Commission (Commission) has adopted the policy of issuing a final procedural order upon receipt of a rate increase application. The Commission has delegated to Commission staff the duty to set the procedural schedule and issue the Order without a prehearing conference. The Commission has set forth a firm schedule in this Procedural Order. The Commission staff may amend the procedural schedule when the amendment does not alter the scheduled hearing date. The Commission will reconsider the date set for hearing only upon good cause shown.

INTRODUCTION

1. Under the authority of ARM 38.2.2702, the Commission enters this Order setting forth the procedure and schedule to be followed in Docket No. D96.8.131. This Order is effective immediately and remains effective until modified by the Commission.

SCHEDULE

2. All dates listed in the following schedule are **receipt dates** (filing and service) unless otherwise specified. Dates prior to the service date of this Order are for reference purposes only.

- (a) August 2, 1996: Application received by Commission.

- (b) August 9, 1996: Notice of Application, Intervention and Tentative Procedural Schedule issued.
- (c) September 10, 1996: Intervenor Data Requests due.
- (d) September 24, 1996: Answers to Intervenor Data Requests due.
- (e) October 15, 1996: Intervenor Testimony due.
- (f) October 25, 1996: Data Requests on Intervenor Testimony due.
- (g) November 8, 1996: Answers to Data Requests on Intervenor Testimony due.
- (h) November 21, 1996: Rebuttal Testimony due.
- (i) November 29, 1996: Data Requests on Rebuttal Testimony due.
- (j) December 9, 1996: Answers to Data Requests on Rebuttal Testimony due.
- (k) December 16, 1996: Prehearing Memoranda due.
- (l) December 19, 1996: Hearing Begins.

PROCEDURE

General

3. The procedure governing this Docket is set forth in applicable provisions of (a) Title 69, Chapter 3, MCA; (b) Title 2, Chapter 4, MCA, Montana Administrative Procedures Act (MAPA); and (c) ARM Title 38, Chapter 2, procedural rules.

Service and Filing

4. Copies of all pleadings, motions, discovery requests, discovery responses, prefiled testimony, and briefs shall be filed with the Commission and served on all parties (US West and all intervenors). Parties shall file with the Commission an original and seven (7) copies of all discovery and an original and ten (10) copies of all other documents, except proprietary documents. Only one copy of proprietary documents shall be filed -- on yellow paper. Service upon the parties shall be upon each party's attorney of record, if applicable, and such other individuals as may be reasonably designated by the attorney of record. Service may not be made by Fax.

5. The Commission recommends the following guidelines where data processing and computer equipment are available:

- (1) Data may be provided on 3 ½" IBM/PC Compatible computer diskettes;
- (2) Spreadsheets may be provided in Lotus 1-2-3 Version 3.1 DOS compatible format;
- (3) Text may be provided in Work Perfect Version 5.1, 6.0 or 6.1 compatible format.

6. Testimony exhibits and data requests/responses should be provided both electronically and in hard copy. Briefs, motions and any correspondence normally provided to the Service List should be made available electronically on request. In general, all parties to this proceeding should attempt to provide rate filing material in electronic form to the extent it is practical and not cost-prohibitive.

Intervention

7. In this Order the term "parties" includes the Applicant, US West, and all intervenors. Individuals or entities are not parties unless they have been granted intervention by the Commission. Petitions to intervene filed after August 23, 1996 must comply with ARM 38.2.2401 - 2406.

Discovery

8. The term "discovery" includes all forms of discovery authorized by the Montana Rules of Civil Procedure, as well as data requests. The Commission urges all parties to conduct discovery primarily through the use of data requests.

9. 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., USW-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 USW, PSC-009 through 016 to MCC, and PSC-017 through 019 to AT&T).

(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 and 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 (a-e) parts . 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 follows:

PSC-500 RE: Return on Equity
Witness - Doe, Page JQD-4, Lines 13-15.

Please provide an analysis of hypothetical debt/equity structure.

PSC-501 RE: Return on Equity
Witness - Doe, Page JQD-14, Lines 11-14.

- a. What is the cost of equity and how is it derived?
- b. What portion of the equity capital is transferred, or imputed, to debt for ratemaking purposes?

10. The party receiving the written discovery or data requests has three days from receipt to file objections to the request(s). Notice of the objection shall be served upon the Commission and on all parties. The Commission may dispose of objections by prompt ruling or may schedule argument. Failure to timely object will be deemed acceptance of the request. Parties are encouraged to try to resolve concerns about requests 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.

11. Any requesting party dissatisfied with the response to any written discovery or data request and desiring Commission action to compel must serve its written objection(s) and relief requested simultaneously upon the Commission and parties within three days after receipt of such response. 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.

12. The Commission establishes an earlier response requirement for data requests filed before the deadlines. Parties shall respond to data requests issued before the deadlines within the same amount of time allotted for responses if data requests were filed on the deadlines. For example, under ¶ 2(c) (the final date for receipt of written discovery from intervenors to US West), if Montana Consumer Counsel (MCC) files earlier data requests to US West, US West shall respond no later than two (2) weeks from receipt of discovery, the same amount of time allotted in ¶ 2(d).

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

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

Testimony and Evidence

15. The Commission contemplates a complete identification of issues before the hearing. The Commission will scrutinize new issues or data in new areas introduced at the time of hearing and may disallow the issues or information unless reasonably related to issues earlier identified in the application, prefiled testimony or proceedings.

16. At hearing, the Commission will adopt into the record all prefiled direct, answer, and rebuttal testimony (including additional issues) upon motion of the proponent, without the witness reading the testimony into the record. The 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 purposes of identification prior to the start of the hearing. Parties shall arrange in advance with the court reporter 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 must 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 Commission staff and all parties. This last requirement may be waived if the documents to be introduced are bulky, or for other good cause, upon making previous arrangements with the Commission and all parties.

19. Parties may be permitted to present live rebuttal testimony only if it is in direct response to an issue raised for the first time in cross-examination or in the testimony of a public witness. Such testimony will be allowed only by leave of the Commission or presiding officer.

20. The Commission may allow citizens and citizen groups to make statements without submitting prepared written testimony. In addition, if they have prepared written testimony they may read it or have it adopted directly into the record.

21. The Montana Rules of Evidence in effect at the time of the hearing in this Docket will govern at the hearing.

22. Any party to this proceeding responding to written discovery from any other party or the Commission shall have each person authoring 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 Commission approval of 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 (not including transcripts of depositions on oral examination) 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 by waiver of Parties and upon stipulation approved by the Commission.

Prehearing Motions and Conferences

23. Motions by any party, including motions to strike prefiled testimony and motions concerning any procedural matter connected with this Docket, shall be raised at the earliest possible time. Prehearing motions shall be submitted on briefs unless otherwise requested by a party and approved by the Commission. Upon a grant of oral argument, the requesting party shall notice it for hearing before the Commission.

24. The Commission staff may set a final Prehearing Conference 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.

25. Nothing in this order shall be construed as limiting the legally established right of the Commission or its staff to inspect the books and accounts of MPC at any time.

Prehearing Memorandum

26. Each party shall submit a prehearing memorandum. The memorandum shall contain a list of all issues uncontested and contested; witnesses to testify; and exhibits and discovery for introduction at hearing. Any special needs to accommodate witness sequence or scheduling should be identified in the prehearing memorandum. Commission staff shall file a limited prehearing memorandum identifying data or discovery responses to be introduced into the record and the witnesses necessary to sponsor the responses, or alternatively, to testify.

Done and Dated this 29th day of August, 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