

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

* * * * *

IN THE MATTER OF the Application)	
of Mid-Rivers Telephone Cooperative)	UTILITY DIVISION
Pursuant to Section 252(e) of the)	
Telecommunications Act of 1996 for)	DOCKET NO. D97.2.19
Approval of its Interconnection)	
Agreement With U S WEST)	ORDER NO. 5981
Communications, Inc.)	

FINAL ORDER APPROVING INTERCONNECTION AGREEMENT

Introduction and Procedural Background

1. On February 8, 1996 the Telecommunications Act of 1996, Publ. L. No. 104-104, 110 Stat. 56 (1996) (the 1996 Act) was signed into law, ushering in a sweeping reform of the telecommunications industry that is intended to bring competition to the local exchange telecommunications market. The 1996 Act requires companies like U S WEST Communications, Inc. (U S WEST) to negotiate agreements with new competitive entrants in their local exchange markets. 47 U.S.C. §§ 251(c) and 252(a).

2. U S WEST and Mid-Rivers Telephone Cooperative, Inc. (Mid-Rivers) negotiated an interconnection contract after Mid-Rivers requested contract negotiations. The agreement is entitled "Agreement For Facilities-Based Network Interconnection For Transport and Termination and Reciprocal Compensation For Local and Extended Area Service Wireline Traffic" (Agreement). This interconnection contract sets the terms for Mid-Rivers' entry into the local exchange market in areas presently served exclusively by U S WEST and for U S WEST's entry in areas presently served exclusively by Mid-Rivers. The agreement establishes terms and conditions for Mid-Rivers to provide service in the Terry and Glendive exchanges and for U S WEST to provide service in the Fallon and West Glendive exchanges.

3. Mid-Rivers and U S WEST submitted their interconnection agreement to the Montana Public Service Commission (Commission) for approval on February 5, 1997. The parties' Agreement was reached through voluntary negotiations and requires Commission approval prior to implementation pursuant to 47 U.S.C. § 252(e). The Commission must approve or reject the Agreement no later than May 5, 1997, 90 days following the request for approval, or it will be deemed approved. 47 U.S.C. § 252(e)(4).

4. On February 20, 1997, the Commission issued a Notice of Application and Notice of Opportunity to intervene and comment. The notice established March 5, 1997 as the deadline for intervention and limited intervenors to addressing the grounds for Commission action identified in § 252(e)(2)(A) of the Act. The notice stated that no public hearing was contemplated by the Commission unless requested by an interested party by March 5, 1997. The notice further stated that comments were required to be filed no later than March 31, 1997.

5. The notice published by the Commission in this proceeding advised interested parties in the geographic areas affected by the agreement that intervention in the proceeding was limited and that the Montana Consumer Counsel (MCC), the only permitted intervenor, could be contacted to represent consumer interests. The MCC did not request intervention and no comments have been received by the Commission.

6. Upon review of the agreement, the Commission makes the following findings, conclusions and order.

Applicable Law and Commission Decision

7. The interconnection agreement filed by U S WEST and Mid-Rivers is intended to cover facilities-based entry only and does not include resale or unbundled element provisions. It provides the rates, terms and conditions for transport and termination of the reciprocal exchange of local calls between the companies' respective end-users within the above-mentioned exchanges and for extended area service (EAS) calls between Glendive and West Glendive customers and between Terry and Fallon customers. Although EAS is currently available between these exchanges, this agreement changes the intercompany compensation arrangement.

8. The Commission must approve or reject the parties' agreement, with written findings as to any deficiencies no later than May 5, 1997. 47 U.S.C. § 252(e)(1) and (4). Section 252(e)(2)(A) limits the grounds for rejection of an agreement reached by voluntary negotiation:

(2) GROUNDS FOR REJECTION.--The State commission may only reject--

(A) an agreement (or any portion thereof) adopted by negotiation under [47 U.S.C. § 252(a)] if it finds that

(i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or

(ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity;

9. Notwithstanding the limited grounds for rejection in 47 U.S.C. § 252(e)(2)(A), the state commission's authority is preserved in § 252 (e)(3) to establish or enforce other requirements of state law in its review of arbitrated or negotiated agreements, including requiring compliance with state telecommunications service quality standards or requirements. Such compliance is subject to § 253 of the 1996 Act which does not permit states to permit or impose any statutes, regulations, or legal requirements that prohibit or have the effect of prohibiting market entry.

10. Unlike an agreement reached by arbitration, a voluntarily negotiated agreement need not comply with standards set forth in § 251(b) and (c). Significantly, standards set forth in § 251(c) and which this agreement may have been negotiated "without regard to" include the following:

(c) ADDITIONAL OBLIGATIONS OF INCUMBENT LOCAL EXCHANGE CARRIERS.--In addition to the duties contained in subsection (b), each incumbent local exchange carrier has the following duties:

....

(2) INTERCONNECTION.--The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network--

(A) for the transmission and routing of telephone exchange service and exchange access;

- (B) at any technically feasible point within the carrier's network;
- (C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and
- (D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252.

47 U.S.C. § 251(c). (Emphasis supplied.) This section and § 252(a)(1) of the Act permit parties to agree to rates, terms and conditions for interconnection that may not be deemed just, reasonable and nondiscriminatory, and which are not determined according to the pricing standards included in § 252(c) of the Act, as would be required in the case of arbitrated rates set by the Commission.

11. The U S WEST/Mid-Rivers agreement establishes interconnection rates for call termination and tandem switching which include an increment to amortize U S WEST's claimed depreciation reserve deficiency. The Commission did not approve this depreciation reserve deficiency increment in either of the two proceedings where U S WEST has pursued this increment--the U S WEST and Western Wireless arbitration proceeding (Docket No. D96.9.150, Order No. 5949b) and the U S WEST and AT&T arbitration proceeding (Docket No. D96.11.200, Order No. 5961b). By approving this agreement, the Commission does not intend to indicate that it approves of the increment and the Commission makes no findings herein on the appropriateness of the depreciation reserve deficiency increment. Our interpretation of the 1996 Act is that §§ 251(c) and 252(a) prevent the Commission from addressing this issue in this proceeding. Notwithstanding this interpretation, the Commission re-emphasizes its prior conclusion that an incremental charge for the depreciation reserve deficiency is appropriately handled in a separate proceeding where the issue can be fully-developed with input from all interested parties.

12. This agreement contains no provision that would restrict customers from transferring between providers should their accounts be "in arrears," a clause which has been rejected by the Commission in agreements for resale of services between U S WEST and other providers.

13. No comments have been received that express any reservations about the parties' agreement not complying with federal law as cited above or with state telecommunications requirements. The MCC, who represents the consumers of the State of Montana has not intervened or filed comments that indicate that he believes that the agreement is not consistent with the public interest, convenience and necessity. No other telecommunications carrier has filed comments to indicate that the agreement is discriminatory toward a carrier not a party to the agreement.

14. The Commission finds that the terms in the parties' agreement appear to conform to the standards required by the Act.

Conclusions of Law

1. The Commission has authority to supervise, regulate and control public utilities. Section 69-3-102, MCA. U S WEST is a public utility offering regulated telecommunications services in the State of Montana. Section 69-3-101, MCA. Mid-Rivers is a telephone cooperative unregulated by the Commission pursuant to § 38-18-104, MCA.

2. The Commission has authority to do all things necessary and convenient in the exercise of the powers granted to it by the Montana Legislature and to regulate the mode and manner of all investigations and hearings of public utilities and other parties before it. Section 69-3-103, MCA.

3. The United States Congress enacted the Telecommunications Act of 1996 to encourage competition in the telecommunications industry. Congress gave responsibility for much of the implementation of the 1996 Act to the states, to be handled by the state agency with regulatory control over telecommunications carriers. *See generally*, the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (*amending scattered sections of the Communications Act of 1934, 47 U.S.C. §§ 151, et seq.*). The Montana Public Service Commission is the state agency charged with regulating telecommunications carriers in Montana and properly exercises jurisdiction in this Docket pursuant to Title 69, Chapter 3, MCA.

4. Adequate public notice and an opportunity to be heard has been provided to all interested parties in this Docket, as required by the Montana Administrative Procedure Act, Title 2, Chapter 4, MCA.

5. The Commission has jurisdiction to approve the interconnection agreement negotiated by the parties and submitted to the Commission for approval according to § 252(e)(2)(A). Section 69-3-103, MCA.

6. Approval of interconnection agreements by the Commission is subject to the requirements of federal law as set forth in 47 U.S.C. § 252. Section 252(e) limits the Commission's review of a negotiated agreement to the standards set forth therein for rejection of such agreements. Section 252(e)(4) requires the Commission to approve or reject the U S WEST/Mid-Rivers Agreement by May 5, 1997, or the agreement will be deemed approved.

Order

THEREFORE, based upon the foregoing, it is ORDERED that the interconnection agreement of the parties is approved.

DONE AND DATED this 29th day of April, 1997, by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chairman

NANCY MCCAFFREE, Vice Chair

BOB ANDERSON, Commissioner

DANNY OBERG, Commissioner

BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson
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.