

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)	
CITIZENS TELECOMMUNICATIONS)	UTILITY DIVISION
COMPANY OF MONTANA for Approval)	DOCKET NO. D97.3.48
of an IntraLATA Toll Dialing Parity)	
Implementation Plan.)	ORDER NO. 5988

FINAL ORDER

INTRODUCTION AND BACKGROUND

1. Citizens Telecommunications Company of Montana (CTC-Montana) filed an application on March 24, 1997 for approval of its intraLATA toll dialing parity implementation plan. The Commission has not approved the plan and has initiated a generic rulemaking proceeding to establish rules concerning intraLATA dialing parity. On June 2, 1997 CTC-Montana filed a motion with the Montana Public Service Commission (Commission) asking the Commission to adopt its Proposed Order addressing sections of the plan for which approval is necessary so that CTC-Montana may implement the plan by August 8, 1997.

2. CTC-Montana is required by § 51.211(c) of the rules of the Federal Communications Commission (FCC) to implement intraLATA toll dialing parity by August 8, 1997, because it has a separate affiliated company also wholly owned by Citizens Utilities Company (Citizens) -- Citizens Telecommunications Company -- that provides interLATA toll service. Citizens' local exchange carrier affiliates in several other states filed similar dialing parity implementation plans in order to meet the FCC deadline. CTC-Montana's affiliates in other states have conducted settlement negotiations with U S WEST Communications, Inc., AT&T of the Mountain States, Inc., and other interexchange carriers and independent telephone companies.

3. CTC-Montana's Proposed Order does not address certain issues such as cost recovery, which will be resolved pursuant to the Commission's rulemaking proceeding for intraLATA dialing parity presently underway. Citizens Telecommunications Company has

stipulated to a similar resolution--of nearly all the issues involved in its implementation plan--with interested parties in states other than Montana and proposed a similar resolution for Montana.

4. In order that CTC-Montana may provide its customers with sufficient notice prior to its implementation of the plan, the Commission issued a Notice of Commission Action in which it concluded that CTC-Montana's request is appropriate. The Notice established a comment period until the close of business on June 20, 1997.

5. AT&T submitted comments concerning a matter which arose after the parties had signed a stipulation in Utah. AT&T expressed its concern that the initial oral contact by a CTC-Montana representative in response to CTC-Montana's proposed notice to consumers might affect the future marketing efforts of interexchange carriers. AT&T suggested that the Commission include an additional paragraph in the final order requiring CTC-Montana to provide copies of its scripts to any interexchange carrier requesting a copy.

6. This order incorporates the provisions of CTC-Montana's proposed order with the added provision suggested by AT&T.

FINDINGS OF FACT AND COMMISSION DECISION

7. Section 251(b)(3) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the Act), 47 U.S.C. 21 251(b)(3), imposes on all local exchange carriers (LECs) the duty to provide dialing parity to all competing providers of local exchange and toll services. Except in certain instances where a state had developed an intraLATA dialing parity plan prior to December 19, 1995, the Act does not require regional Bell operating companies (RBOCs) to implement intraLATA dialing parity until February 8, 1999, or until they are permitted to enter the in-region interLATA toll market, whichever occurs first. CTC-Montana, however, must implement its intraLATA toll dialing parity plan by August 8, 1997, because its parent company also owns a company which provides interLATA toll service.

8. The Commission has initiated a rulemaking docket, pursuant to a petition filed by AT&T, which is intended to result in intraLATA dialing parity rules. See In the Matter of Proposed Adoption of Rules Pertaining to IntraLATA equal access Presubscription, 3 Mont.

Admin. Reg. 299 (1997). Based on comments received in this rulemaking, the Commission decided to conduct a hearing prior to adopting rules for intraLATA dialing parity in Montana. However, CTC-Montana is unique in Montana and must move forward so as to provide notice to its customers concerning the August implementation of intraLATA dialing parity in its Montana territory.

9. CTC-Montana asserted that adoption of its Proposed Order would allow CTC-Montana to meet its August 8 implementation date and preserve parties' rights to fully debate dialing parity issues in the Commission's rulemaking proceeding. CTC-Montana further contended that this would serve the public interest because it would achieve the following results: (1) enable CTC-Montana to meet its obligation under FCC rules to implement intraLATA dialing parity in its exchanges by August 8, 1997, thereby bringing Montana customers the benefits of increased competition in the intraLATA toll market; (2) efficiently resolve only those issues necessary for CTC-Montana to implement dialing parity by August 8, 1997, by taking advantage of settlement agreements reached in other states on the exact same issues; (3) preserve all parties' rights to fully consider issues related to intraLATA toll dialing parity in the Commission's pending rulemaking proceeding; and (4) ensure that CTC-Montana will comply with any applicable rules adopted in the pending rulemaking on a going forward basis.

10. Based on CTC-Montana's assertions, the Commission issued a Notice of Commission Action, alerting interested parties of its intent to issue an order with regard to the proposed dialing parity implementation plan as soon as practicable following receipt of comments. AT&T, the only commenter, recommended that an additional paragraph be included in the order requiring CTC-Montana to provide interexchange carriers a copy of the script its representatives will use when receiving inquiries pursuant to its notice, if requested.

11. The Commission voted to adopt the provisions of the proposed order with AT&T's recommended addition. This Order sets forth these provisions.

CONCLUSIONS OF LAW

12. The Commission has authority to supervise, regulate and control public utilities. Section 69-3-102, MCA. CTC-Montana is a public utility offering regulated telecommunications services in the State of Montana. Section 69-3-101, MCA.

13. 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.

14. 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.

15. 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.

16. The Commission has jurisdiction to approve the intraLATA dialing parity implementation plan submitted to the Commission for approval according to 47 C.F.R. § 51.211(c). Section 69-3-103, MCA.

ORDER

THEREFORE, based upon the foregoing, and in order to enable CTC-Montana to meet its August 8, 1997, implementation date and to preserve all parties' rights to fully consider intraLATA dialing parity issues in the pending rulemaking, it is ORDERED:

1. CTC-Montana shall convert the central offices identified in Exhibit A, attached hereto, to intraLATA equal access on August 8, 1997.

2. CTC-Montana shall implement full, two-PIC intraLATA equal access, thereby allowing end users to presubscribe to one carrier for all interLATA toll calls and to the same or another carrier for all intraLATA toll calls.

3. Unless otherwise ordered by the Commission in the pending rulemaking or any other proceeding, customer balloting should not be used in connection with CTC-Montana's implementation of intraLATA equal access.

4. CTC-Montana shall provide notice to its end user customers of the forthcoming conversion of its serving end offices to intraLATA equal access by means of a one-time postcard mailing, a copy of which is attached as Exhibit B, as soon as reasonably practicable after the date this Order is adopted and in no event later than 30 days prior to the date of conversion. Any subsequent customer notices shall be issued in compliance with any applicable Commission rules adopted in the pending rulemaking or any other proceeding.

5. Unless otherwise ordered by the Commission in the pending rulemaking or any other proceeding, current customers of CTC-Montana who do not affirmatively select an intraLATA PIC will remain with their pre-existing intraLATA toll carrier.

6. Unless otherwise ordered by the Commission in the pending rulemaking or any other proceeding, new CTC-Montana customers who commence service on or after the date of intraLATA equal access conversion who do not affirmatively select an intraLATA PIC shall not be presubscribed to any carrier; instead, they will be required to place intraLATA toll calls on an access code basis (*i.e.*, 10XXX, 950+, 100+, 800+, etc.) until they select a carrier on a presubscribed basis.

7. Any interexchange carrier that wishes to be listed at the time of conversion as an intraLATA carrier by CTC-Montana shall submit its Access Service Request no later than 30 days prior to the equal access conversion date.

8. CTC-Montana shall take customer orders for intraLATA PIC selections after the customer notices are issued and will process those selections to be effective beginning on the equal access conversion date.

9. Unless otherwise ordered by the Commission in the pending rulemaking or any other proceeding, CTC-Montana's non-recurring charge for an intraLATA PIC change shall be

set equal to the current rates of CTC-Montana for an interLATA PIC change (\$5.00). CTC-Montana's customers shall be allowed one intraLATA PIC change free of charge during the period commencing on the conversion date and ending 120 days later, or on the effective date of rules adopted in the pending rulemaking (Waiver Period), whichever is shorter, subject to extension so that the full Waiver Period equals the period required by those rules. During the Waiver Period, the interLATA PIC change charge shall be assessed for interLATA PIC changes, even if customers PIC the same carrier for interLATA service as they select for their initial intraLATA PIC change during a single contact to the LEC business office. The \$5.00 fee shall be assessed on all intraLATA PIC changes after the initial selection. Separate interLATA and intraLATA PIC change charges shall be assessed when customers change their carriers for those services, except that, if a customer PICs the same carrier for intraLATA and interLATA service during one contact to the LEC business office, a change charge of \$7.50, rather than \$10.00, shall be assessed.¹

10. CTC-Montana shall be authorized to recover all intraLATA equal access implementation costs as provided by the rules and orders of the FCC, as well as any intraLATA equal access implementation costs that this Commission authorizes LECs to recover in the pending rulemaking or any other proceeding. CTC-Montana shall defer recovery of such costs until the Commission adopts rules in the pending rulemaking, and such costs shall be recovered in accordance with the cost recovery mechanism adopted by the Commission. In the meantime, CTC-Montana shall record any potentially recoverable costs solely attributable to intraLATA equal access in a memorandum account, including the following categories of costs:

- (a) incremental cost of network hardware necessary to provide the full 2-PIC methodology in all exchanges

¹These rates may change prospectively as a result of rules adopted in the pending rulemaking or any other proceeding, and it is expressly noted that such rates for CTC-Montana do not necessarily reflect CTC-Montana's incremental costs for PIC changes.

- (b) central office software upgrades
- (c) software translations
- (d) system programming/testing
- (e) training for Business Office, Carrier Services, Customer Services, and Service Center personnel
- (f) customer notification
- (g) any other implementation costs
- (h) charges for initial intraLATA PIC changes during the Waiver Period

11. Unless otherwise ordered by the Commission in the pending rulemaking or any other proceeding, CTC-Montana will not impose any PIC restriction or freeze unless it receives a written request from a customer. Where technically feasible, CTC-Montana will impose separate intraLATA and interLATA PIC restrictions. CTC-Montana must have a written request for a PIC restriction that specifies both intraLATA and interLATA service in order for it to apply to both services. CTC-Montana shall not encourage customers to request PIC restrictions but may inform customers that such restrictions are available.

12. This Order governs implementation of intraLATA equal access by CTC-Montana and shall not be construed by or deemed precedential by any party or the Commission with respect to the establishment of intraLATA equal access terms, conditions and conversion schedules for any other LECs subject to the obligation to provide intraLATA equal access in the pending rulemaking or any other proceeding. Moreover, rules governing implementation of intraLATA equal access adopted in the pending rulemaking or any other proceeding shall be presumed to apply prospectively to CTC-Montana, and CTC-Montana shall comply with such rules unless CTC-Montana demonstrates to the Commission and the Commission decides that compliance with any or all of such rules would be unreasonable, unduly economically burdensome, confusing to customers, or otherwise not in the public interest.

IT IS FURTHER ORDERED that CTC-Montana shall provide a copy of scripts to be used by its representatives who receive inquiries at the 1-800 telephone numbers listed on the notification to customers, Exhibit "B" attached to this Order, to any interexchange carrier requesting them.

DONE AND DATED this 25th day of June, 1997, by a vote of 4-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chairman

NANCY MCCAFFREE, Vice Chair

BOB ANDERSON, 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.