

Service Date: September 12, 1997

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  
MONTANA WIRELESS, INC. )  
for Approval of an IntraLATA Toll ) DOCKET NO. D97.8.157  
Dialing Parity Implementation Plan. ) ORDER NO. 6011

**ORDER GRANTING WITHDRAWAL AND CLOSING DOCKET**

Background

1. On August 25, 1997 Montana Wireless, Inc. (Wireless) filed an application pursuant to 47 C.F.R. § 51.211 with the Montana Public Service Commission (Commission) for approval of IntraLATA Toll Dialing Parity Implementation Plans.

2. Wireless intends to provide interLATA toll services in 1997 and, according to rules promulgated by the Federal Communications Commission (FCC), must provide intraLATA toll dialing parity by the time they begin offering interLATA toll services. *See* 47 C.F.R. § 51.211(d). The FCC rules require a local exchange carrier (LEC), that is not a Bell Operating Company, if implementing in-region interLATA toll services between the period of August 8, 1997, and February 8, 1999, to simultaneously implement intraLATA dialing parity. The FCC's rules require state commissions to review and approve dialing parity implementation plans. If a state commission elects not to do so, or if it will not complete its review in time for the LEC to meet the FCC's deadlines, the FCC rules state that the LEC must file its plan with the FCC. *See* 47 C.F.R. § 51.213.

3. The FCC's dialing parity rules were challenged in California v. Federal Communications Comm'n, No. 96-3519, \_\_\_ F.3d \_\_\_ (8th Cir. 1997), and vacated in part by that court's opinion issued on August 22, 1997. On August 29, 1997, Wireless filed a Notice of Withdrawal of Application requesting this Docket be closed. The Commission met in a

scheduled work session on September 3, 1997 and voted 5-0 to grant the withdrawal and to close this Docket.

#### Discussion

4. The FCC's rules on dialing parity, 47 C.F.R. §§ 51.205-51.215, were set aside to the extent they pertain to intraLATA telecommunications traffic. In partially vacating the FCC's rules, the Court was not persuaded by the FCC's argument that the 1996 Act gives it parallel jurisdiction with the states over intraLATA dialing parity. California v. FCC, slip op. 18. The Court further stated that the FCC had exceeded its jurisdiction under 47 U.S.C. § 152(b) by adopting rules for intraLATA dialing parity. Id.

5. The pertinent FCC rule in this Docket is 47 C.F.R. § 51.211, which requires Montana LECs to submit their dialing parity implementation plans to the Commission for approval. Without this rule in place for intraLATA dialing parity, there is no other federal or state requirement that dialing parity implementation plans be prepared or that they be submitted to the Commission for approval prior to implementation. Therefore, the Application in this Docket is moot. However, the Commission is presently considering rules for intraLATA dialing parity which may require Commission approval of certain aspects of dialing parity implementation.

#### Order

THEREFORE, based upon the foregoing, IT IS ORDERED that the Application filed by Montana Wireless, Inc. for approval of its dialing parity implementation plans is DISMISSED and this Docket is closed.

DONE AND DATED this 3rd day of September, 1997 by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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DAVE FISHER, Chairman

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NANCY MCCAFFREE, Vice Chair

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BOB ANDERSON, Commissioner

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DANNY OBERG, Commissioner

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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.