

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

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IN THE MATTER OF Nemont Telephone)	UTILITY DIVISION
Cooperative Inc.'s implementation of 1+)	
IntraLATA Dialing Parity.)	DOCKET NO. D98.10.228
)	ORDER NO. 6169
)	
)	

FINAL ORDER

INTRODUCTION AND PROCEDURAL BACKGROUND

1. On March 26, 1999, Nemont Telephone Cooperative Inc.(Nemont) filed an Application for Approval of its IntraLATA Equal Access Implementation Plan (Plan) with the Montana Public Service Commission (Commission). Nemont’s Plan requests approval of the procedures and processes it intends to use to implement 1+ intraLATA dialing parity (also known as intraLATA equal access).

2. Nemont filed its Plan in response to a bona fide request (BFR) received from AT&T Communications of the Mountain States, Inc. (AT&T) on October 6, 1998. AT&T’s BFR requested that Nemont implement intraLATA equal access in all its exchanges.

3. The Commission has adopted rules for intraLATA dialing parity implementation in Montana. 1998 Mont. Admin. Reg., No. 7, at 983-1003 (April 16, 1998) (the “dialing parity rules” or “rules”). See ARM 38.5.4101 through 38.5.4120. ARM 38.5.4120 requires Nemont to implement intraLATA dialing parity pursuant to a Commission-approved plan.

4. Following a review of Nemont's Plan the Commission makes the following findings and conclusions.

FINDINGS OF FACT AND COMMISSION DECISION

5. The Commission established the intraLATA equal access implementation rules "to provide guidelines and procedures for the commission to carry out its duties pursuant to the Federal Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996)." ARM 38.5.4101, entitled "SCOPE AND PURPOSE OF RULES." Subsection (2) provides further indication of purpose in adopting the rules:

...The commission imposes this subchapter to encourage competitive entry, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers while ensuring that the rates charged and services rendered by telecommunications services providers are just and reasonable.

The rules were adopted after giving opportunity to comment to all interested parties and reflect a careful, reasoned consideration of all comments received, both in response to AT&T's original petition for the rulemaking and in response to later formal rulemaking inquiries. They were adopted specifically for implementing intraLATA equal access in Montana.

6. ARM 38.5.4120(1) states that ILECs "shall file their toll dialing parity plans carrying out the intraLATA equal access presubscription implementation rules set forth in ARM 38.5.4101 through 38.5.4116." ARM 38.5.4120(1) also provides that interested parties who wish to comment on a LEC's toll dialing parity plan shall have a reasonable opportunity to do so.

7. ARM 38.5.4120 provides that Nemont's Plan must describe how ARM 38.5.4101 through 38.5.4116 will be carried out and include information addressing the following:

- (a) detailed information explaining how and when carriers will be notified of the implementation schedule;
- (b) the language to be used in and the manner of distribution of, the customer notification letter;

- (c) a description of Nemont's anticipated cost of implementation, including Nemont's specific implementation costs, the vehicle that Nemont intends to use to recover implementation costs, and the cost recovery time frame; and
- (d) a description of Nemont's proposed business office practices and sample scripts that demonstrate how its business office personnel will handle customer-initiated business office contacts with Nemont in its role as a local exchange provider in a competitively neutral manner following implementation.

We address the general subtopics of intraLATA equal access implementation with respect to Nemont's Plan below:

A. Part II. Implementation Schedule

8. Nemont's scheduled implementation date for all its exchanges is April 6, 1999.

Nemont will implement the full "2-PIC" carrier selection methodology required by ARM 38.5.4103(2). All residential, business and payphone customers will be offered intraLATA equal access via the 2-PIC carrier selection method.

B. Part III. Customer Lists and Carrier Notification Procedures

9. *Carrier notification:* ARM 38.5.4120(3) requires that Nemont provide notice to registered interexchange carriers no less than 120 days prior to the actual implementation date. The notice must include the implementation schedule, terms and conditions of participation and ordering procedures. All carriers wishing to participate in presubscription must respond to Nemont within 30 days. Further, Nemont may not allow participation by unregistered telecommunications providers.

10. On December 16, 1999 Nemont sent all interexchange carriers its intraLATA equal access participation form via the Commission's electronic "Listserv". The Listserv includes carriers who have registered on the Commission's website as required by Montana law and have provided e-mail addresses on the website. Nemont elected to use the electronic

Listserv in lieu of a first class mailing. The Commission required Nemont to mail its carrier notification by first class mail to registered carriers who could not be contacted electronically. Nemont is required to respond to all IXC requests to participate in Nemont's Plan within three days of each IXC request.

11. *Customer lists:* ARM 38.5.4105(2) requires a LEC or primary toll carrier make available to all registered carriers that intend to offer equal access a complete list of the primary toll carrier's customers by name, address and phone number within 45 days of receipt of a BFR. On April 6, 1999, the Commission waived ARM 38.5.4105(2) and required Nemont to make available its customer list to all requesting registered carriers that intend to offer intraLATA equal access at that time. Charges for such list shall be cost based and nondiscriminatory.

12. *PIC change requests:* ARM 38.5.4116(1)(e) requires Nemont to begin accepting Letters of Authorization (LOAs) and customer requests for an intraLATA carrier selection no later than 60 days prior to implementation. In the case of multiple LOA submissions, the last dated LOA shall be processed. Nemont's Plan did not specify what criteria it would use to evaluate acceptable LOAs and customer requests for PIC changes. Nemont is required to accept and process LOAs that conform to ARM 38.5.3801 through ARM 38.5.3810, the emergency slamming rules adopted by the Commission in Docket no. L.99.1.1-RUL, and §69-3-1304, MCA.

C. Part IV: Customer Notifications, Education, and Safeguards

13. Customer notification is addressed in several of the Commission's rules. ARM 38.5.4120(1)(b) states that a LEC's plan must describe how notification to end users will be carried out, the language the LEC will use in its customer notification letter and a description of the manner the letter will be distributed.

14. ARM 38.5.4105(4) requires all informational materials, forms and scripts to be “complete, clear and unbiased.” It further requires local exchange carriers to promptly make any changes required by the Commission before using them. Pursuant to ARM 38.5.4104 and at least 30 days prior to its scheduled implementation, Nemont must provide written notification to subscribers that describes intraLATA dialing parity and explains presubscription procedures. Information provided pursuant to ARM 38.5.4104 shall also inform customers with existing interLATA PIC freezes on their account that their freeze will extend to their existing intraLATA toll carrier, Nemont Communications, Inc. (Nemont), until the end users take action to change it.

15. *Existing customer notification:* Nemont’s Plan states that it will provide written notification to its customers describing intraLATA dialing parity and explaining presubscription procedures. Nemont attached as Exhibit A its proposed format to notify customers. Nemont sent its customer notification on March 1, 1999 as part of its customer monthly bill statement. Nemont’s Plan for notifying existing customers is consistent with Commission rules and its written notification contains a good explanation of intraLATA equal access presubscription that should help its customers understand this often-confusing concept.

16. *New customer notification:* Nemont’s Plan provides that all new customers who commence local service after the mailing to existing customers and before equal access implementation shall be provided information from Nemont about their carrier selection options at the time they sign up for local service. Customers who subscribe to local service between March 1, 1999 and April 6, 1999, will be provided a copy of the written notice furnished to existing customers.

17. These new subscribers may select both their primary interLATA and intraLATA carriers or be assigned “no-PIC” status. Presently, Nemont waives charges for interLATA PIC

selections for 30 days after new service is installed and is required to follow this practice for intraLATA PIC selections as well. The 30 day waiver is consistent with past Commission decisions.

18. *Waiver period:* ARM 38.5.4111(1) states that “no charge shall be imposed for a customer’s initial selection of a primary intraLATA carrier. Each LEC shall allow customers to change their selection of a primary intraLATA carrier one time only at no charge within 90 days following implementation of intraLATA dialing parity in an exchange.” Nemont’s Plan states that no charge will be imposed for 90 days following implementation of intraLATA equal access.

19. Section 4111(2) states “in cases in which customers change both their interLATA PIC and their intraLATA PIC at the same time to either the same carrier or to separate carriers, a single PIC change charge shall apply.” Nemont’s Plan did not address the issue of simultaneous PIC change charges. The Commission requires Nemont to charge a “single PIC change charge” for simultaneous interLATA PIC and intraLATA PIC changes pursuant to ARM 38.5.4111(2).

20. *PIC charges:* ARM 38.5.4111 states that PIC change charges shall be “the same as those imposed for changing interLATA carriers.” Nemont will charge \$5.00 for an intraLATA PIC change, \$5.00 for an interLATA PIC change and \$5.00 for simultaneous interLATA and intraLATA PIC changes.

21. *Customer Safeguards:* Nemont’s customer notification letter implies that its customers must inform Nemont when they select an alternate intraLATA carrier. Nemont’s letter provides, “if you would like to select another long distance company to handle these [intraLATA] calls, you will need to notify NEMONT TELEPHONE COOPERATIVE, INC. of your selection.” The Commission’s dialing parity rules do not require end users to notify their

current intraLATA carrier when they select another carrier. Nemont's end users may select an alternate intraLATA carrier either by contacting the new carrier indirectly by contacting Nemont directly.

22. Nemont's Plan states that "only LOAs that conform to the PSC's emergency slamming rules will be accepted and processed." Nemont's Plan further provides that all customers who have an interLATA PIC freeze on their account will have that PIC freeze placed on their intraLATA service as well. Nemont's Plan does not state if or how it will follow Montana statutes and administrative rules with regard to "slamming". Nemont shall follow all Montana statutes and administrative rules in regard to accepting and processing LOAs and customer requests for PIC changes in addition to the Commission's emergency slamming rules.

23. Nemont's will provide a list of all eligible interexchange carriers who have responded during the 30-day period following Nemont's carrier notice and attach their toll free telephone number to the customer notification letter. The notification provides procedures for changing from the present intraLATA carrier to another. Nemont's notice to end users contains sufficient information to educate customers on intraLATA dialing parity and procedures for requesting a PIC change.

24. Nemont states that it will handle all customer-initiated contacts for PIC changes in a neutral manner. Many of the Commission's previously expressed concerns about contact handling by local exchange carriers who provide intraLATA toll service apply to Nemont because intraLATA toll service is provided by an affiliate, Nemont Long Distance. Therefore, the Commission imposes some requirements for these contacts.

25. Nemont is required to provide either in writing or verbally, in random order, the names of all carriers providing intraLATA interexchange service to all requesting customers in its area. The random list shall be scrambled at least once per month.

26. In addition, ARM 38.5.4104(4) requires Nemont to provide proposed business office scripts to the Commission for review as part of its implementation Plan. The rule requires that the scripts be filed so that they can be reviewed by the Commission prior to approval or modification of the Plan. Nemont is required by rule to submit the scripts its customer service representatives will refer to and will be trained to use to discuss intraLATA dialing parity for new service requests and customer contacts for changes in service other than “general service” contacts.

27. Nemont submitted the following script:

You are now able to choose an interexchange carrier to handle your long distance IntraLATA as well as InterLATA calls. Choosing your preferred IntraLATA carrier means that a special access code will no longer be required to have that carrier handle those types of long distance calls. There are several carriers available and if you already have a preference I can take your request now. Or, if you would prefer, I can read the list of carriers available in your area.

Nemont’s script is sufficient to advise customers of their choices for intraLATA carriers and is competitively neutral as required by Commission rule.

28. The Commission recognizes that a script will not be appropriate for all calls. Some contacts will require that Nemont’s representatives adapt their conversation based on individual circumstances. The script provides the necessary information, however, and as long as the representative conveys the information provided for in the script, such deviations are acceptable.

29. The Commission has imposed marketing restrictions for local exchange carriers who provide intraLATA toll. Nemont’s affiliate, Nemont Communications Inc., provides

intraLATA toll to Nemont's subscribers; therefore, reasonable LEC restrictions related to marketing on customer-initiated calls to Nemont's business office apply. The Commission concludes that it is reasonable to prohibit Nemont from initiating marketing and promotional activities for Nemont Communications Inc.'s intraLATA services on contacts for new service, transfers of service and number changes.

D. Part V: Costs Recovery

30. Nemont's Plan states that it will incur incremental costs to implement intraLATA dialing parity. Major cost categories cited by Nemont include: (1) switching upgrade to allow 2-PIC presubscription, (2) support systems, (3) customer notification, (4) office personnel training, and (5) implementation activities to migrate subscribers to their carrier of choice. All these costs are recoverable pursuant to ARM 38.5.4115.

31. ARM 38.5.4120 requires Nemont's Plan to describe the anticipated cost of implementation, including its specific intraLATA presubscription costs, the vehicle that it intends to use to recover them, and the time frame for recovery. Nemont did not submit cost support data defining the incremental costs associated with implementing intraLATA equal access. However, Nemont states that it will notify the Commission if and when it seeks to recover these costs.

32. The Commission will not require Nemont to provide a cost analysis and is satisfied with Nemont's proposal. The public interest is best served by waiving the requirement for cost information for Nemont. If Nemont incurs substantial unanticipated costs to implement dialing parity and files additional materials to support a surcharge, the Commission will address cost recovery at that time.

CONCLUSIONS OF LAW

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

ORDER

THEREFORE, based on the foregoing, IT IS ORDERED that Nemont's intraLATA dialing parity implementation Plan is approved as discussed herein.

DONE AND DATED this 6th day of April 1999, by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chairman

NANCY MCCAFFREE, Vice Chair

BOB ANDERSON, Commissioner

GARY FELAND, 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.