

Service Date: October 21, 1998

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

IN THE MATTER OF the Application of)	
North American Telcom, Inc. and)	UTILITY DIVISION
U S WEST Communications, Inc.)	DOCKET NO. D98.3.61
Pursuant to Section 252(e) of the)	
Telecommunications Act of 1996 for)	ORDER NO. 6067a
Approval of their Resale Agreement.)	

ORDER ON FIRST AMENDMENT TO RE SALE AGREEMENT

INTRODUCTION

1. This Order addresses the "First Amendment to Agreement for Service Resale (Montana)" (First Amendment) filed by U S WEST Communications, Inc. (U S WEST) on August 12, 1998. The Montana Public Service Commission (Commission) approved the resale agreement between North American Telcom, Inc. (NATelcom) and U S WEST in Order No. 6067 dated May 18, 1998.

2. Order No. 6067 approved the majority of the terms in the parties' agreement. It rejected four sections of the agreement and explained the reasoning in so doing. The unacceptable sections were: (1) Section IV.C.4(d), proof of authorization for placing orders on behalf of end users; (2) Section VII.C.5, the absence of notification to the Commission if termination of service to the reseller was being contemplated; (3) Section VII.Q, the absence of notification to the Commission in connection with dispute resolution; and (4) Section IV.E.7, the failure to reflect the Commission's conclusions concerning construction of new facilities. The First Amendment revises these four sections pursuant to the Commission direction in several other orders rejecting revisions to the sections. *See, e.g., In the Matter of the Application of*

Sterling International Funding, Inc. and U S WEST Pursuant to Section 252(e) of the Telecommunications Act of 1996 for approval of their Resale Agreement, Docket No. D97.12.246, Order No. 6053a (May 18, 1998) (the "Sterling docket"). The parties' First Amendment is approved as discussed below.

COMMISSION DECISION

Ordering and Maintenance - Section IV.C.4(d), First Amendment Section 1.1

3. Section IV.C.4(d) of the parties' agreement included a provision that Proof of Authorization (POA) for placing orders on behalf of the end user shall consist of documentation acceptable to U S WEST, which may be obtained by a "prepaid returnable postcard supplied by Reseller which has been signed and returned by the end user." The reseller then would have to wait 14 days after mailing the postcard before placing an order to change. The Commission rejected this section in Order No. 6067 because it was not consistent with § 69-3-1303, MCA.

4. Order No. 6053a in the Sterling docket and similar orders rejected amendments which revised Section IV.C.4 by deleting the first paragraph and sub-paragraphs a. through d., replacing subsection IV.C.4 with the following:

Prior to placing orders on behalf of the end user, Reseller shall be responsible for obtaining and have in its possession Proof of Authorization ("POA"). POA shall consist of documentation acceptable to USWC of the end user's selection of Reseller. Such selection may be obtained in any manner consistent with Montana or federal law.

5. The Commission rejected this revision because it stated that U S WEST's selection of acceptable documentation could be obtained in "any manner consistent with Montana or federal law." Montana law on "slamming" is more prescriptive than the federal law and applies to unauthorized changes in local exchange service as well as unauthorized changes of a long distance carrier. The Commission stated clearly that the provision must conform to

Montana law and that the reference to federal law should be deleted. The First Amendment deletes “or federal” from the last sentence of the section and is now acceptable.

Construction - Section IV.E.7, First Amendment Section 1.2.

6. The Commission stated that Section IV.E.7 in the parties’ agreement, as first presented, could conflict with the public interest. The Commission rejected that section because it did not consider circumstances which may arise where U S WEST is required by law to construct facilities.

7. The parties redrafted Section IV.E.7 to state:

Resold services are available only where facilities currently exist and are capable of providing such services without construction of additional facilities or enhancement of existing facilities unless otherwise required by Montana Law.

Section IV.E.7 is acceptable as amended.

Payment - Section VII.C.5; First Amendment Section 1.3.

8. Section VII.C in the parties’ agreement detailed the provisions for payment to U S WEST by NATelcom. The Commission rejected subsection 5 because it was not consistent with the public interest. The Commission expressed its concern that NATelcom’s failure to pay according to its terms could subject NATelcom’s end-user customers to disconnection by U S WEST through no fault on their part. The Commission also expressed its concern that end user customers of NATelcom be notified if NATelcom is going to be disconnected. The Final Order rejected subsection 5 because it included no provision for timely notifying the Commission to enable the Commission to take appropriate action to protect NATelcom’s end user customers.

9. In Order No. 6053a and similar orders, the Commission suggested that language be included to provide that U S WEST shall notify the Commission at the same time it notifies NATelcom of a pending disconnection. The Commission suggested that the first sentence of

Section 1.3 in the several amendments could be revised to state that U S WEST "will notify Reseller and the Commission of such disconnection ten (10) days prior to the effective date of the disconnection." Section 1.3 has been amended to reflect the Commission's suggestion in these other dockets and is acceptable.

Dispute Resolution - Section VII.Q, First Amendment Section 1.4

10. The Commission rejected Section VII.Q of the parties' agreement relating to dispute resolution. Section VII.Q contained detailed provisions for resolving disputes by an arbitrator. The Commission expressed concern that the resolution determined by an arbitrator who is not the Commission may not be consistent with the Telecommunications Act of 1996 and emphasized the importance of Commission review for a decision reached by an out of state arbitrator to ensure that it complies with Montana law prior to its going into effect. The Commission rejected Section VII.Q because it did not provide for notification to the Commission of issues to be arbitrated or of the subsequent decision reached by the arbitrator.

11. The parties' first revisions to Section VII.Q, Section 1.4 in several other dockets was nearly identical to VII.Q. However, it included changes which went beyond what the Commission identified as problematic in the agreement and included ambiguous statements about the time the decision would go into effect and the Commission review of the award. The Commission expressed concerns that the first revision did not provide for notice to the Commission prior to retaining an arbitrator, and that it permitted an arbitrator's decision to go into effect prior to Commission review and approval. The Commission suggested that the parties revise this section to comply with the law and to provide that an arbitrated decision shall not go into effect before the Commission reviews and approves it.

12. The First Amendment to Section VII.Q states that the arbitrator's award "shall be final and binding and may be entered in any court having jurisdiction thereof subject to review by the Commission." It further provides that the parties shall advise the Commission that they will be settling a dispute through arbitration prior to retaining an arbitrator, that they will submit a copy of each arbitration opinion to the Commission within 10 days of service of such opinion, and that the arbitrator's decision shall become effective upon Commission approval or after the passage of 90 days of filing if the Commission takes no action concerning the filing. The revised section in the First Amendment is acceptable.

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. NATelcom, as a provider of regulated telecommunications services in the State of Montana, also will be regulated when it offers local exchange service in Montana as a competitive local exchange carrier.

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 Commission has jurisdiction to approve amendments to the Interconnection Agreement negotiated by the parties and submitted to the Commission for approval according to Section 252(e)(2)(A). Section 69-3-103, MCA.

4. Commission approval of interconnection agreements and their amendments 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.

ORDER

THEREFORE, based upon the foregoing, it is ORDERED that the First Amendment to Agreement for Service Resale between U S WEST Communications, Inc. and North American Telcom, Inc. is APPROVED.

DONE AND DATED this 19th day of October, 1998, 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.