

Service Date: October 2, 1998

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    |
| U S WEST Communications, Inc. to             | ) |                     |
| Implement its IntraLATA Dialing Parity Plan. | ) | DOCKET NO. D98.4.86 |
|  | ) | ORDER NO. 6063a     |
|  | ) |                     |
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**PRELIMINARY ORDER ON U S WEST'S  
DIALING PARITY IMPLEMENTATION PLAN**

**INTRODUCTION AND PROCEDURAL BACKGROUND**

1. On April 24, 1998, U S WEST Communications, Inc. (U S WEST) filed its proposed IntraLATA Dialing Parity Plan and associated draft tariff pages with the Montana Public Service Commission (Commission) for approval. U S WEST's plan states that it will implement intraLATA dialing parity coincident with its entry into the interLATA market or in February 1999, whichever is earlier. U S WEST has filed an application with this Commission for a recommendation that its interLATA entry should be permitted by the Federal Communications Commission (FCC). See In the Matter of the Investigation into U S WEST's Compliance with Section 2721(c) of the Telecommunications Act of 1996, Docket No. D97.5.87. The hearing for U S WEST's application with this Commission (271 application) is presently scheduled to commence on January 19, 1999. Because U S WEST will likely not file an application with the FCC until this Commission has reviewed the merits of the 271 application, U S WEST's interLATA entry will not occur prior to February 8, 1999, the date it is required to provide intraLATA dialing parity.

2. On April 16, 1998, the Commission adopted rules for implementing dialing parity by Montana incumbent local exchange carriers (ILECs). 1998 Mont. Admin. Reg., No. 7, at 983-1003 (April 16, 1998) (the "dialing parity rules" or "rules"). These rules provide the procedures and requirements for ILECs' dialing parity implementation. *See* ARM 38.5.4101

through 38.5.4120. U S WEST's unique circumstances are specifically addressed in the rules. US WEST was required to submit its implementation plan no later than August 8, 1998. Other ILECs in Montana are not subject to the requirement to provide dialing parity by February 8, 1999 and also are not restricted in providing interLATA toll.

3. Although no party has intervened in this Docket, the Commission considered the interests of numerous parties in the rulemaking proceeding leading up to the adoption of the dialing parity rules affecting U S WEST's application. Parties commenting in that proceeding included the Telecommunications Resellers' Association (TRA), Eclipse Communications Corporation, Montana Independent Telecommunications Systems (MITS), the Montana Telephone Association (MTA), AT&T Communications of the Mountain States, Inc. (AT&T), MCI Telecommunications Corporation, Sprint Communications Company, Citizens Telecommunications Company, PTI Communications, Ronan Telephone Company, Hot Springs Telephone Company, U S WEST, and many consumers. U S WEST, AT&T, MITS, MTA, and Ronan and Hot Springs telephone companies also provided oral comments at the hearing conducted by the Commission on December 18, 1997.

4. ARM 38.5.4120(3) requires U S WEST to issue a notice to long distance carriers in Montana advising them that they must notify U S WEST of their intent to participate in intraLATA 1+ presubscription. The notice must be sent no later than 120 days prior to February 8, 1999. Therefore, at least certain portions of U S WEST's plan must be approved prior to October 11, 1998, for timely mailing of these notices to long distance carriers.

### **DISCUSSION**

5. 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. The Commission's Notice of Filing served on May 11, 1998 was mailed to all persons on the service list for this Docket and was published in newspapers serving U S WEST's local exchange areas. The service list included only U S WEST representatives and the Montana Consumer Counsel.

6. ARM 38.5.4120 provides that U S WEST'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 U S WEST's anticipated cost of implementation, including U S WEST's specific implementation costs, the vehicle that U S WEST intends to use to recover implementation costs, and the cost recovery time frame; and
- (d) a description of U S WEST's proposed business office practices and sample scripts that demonstrate how its business office personnel will handle customer-initiated business office contacts with U S WEST in its role as a local exchange provider in a competitively neutral manner following implementation.

7. U S WEST filed its implementation plan after the Commission adopted rules, but the plan contains no reference to the Commission's dialing parity rules in ARM 38.5.4101 through 38.5.4120. U S WEST's plan does not describe how ARM 38.5.4101 through 38.5.4120 will be carried out. Further, as discussed in detail below, some portions of the plan do not comply with the rules; rather, the implementation plan substantially reflects U S WEST's advocacy in the Commission's rulemaking docket. In short, U S WEST has ignored the rules established by the Commission for this event.

8. 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. They 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. For ILECs other than U S WEST, the rules provide for bona fide request and waiver procedures. The rules specifically address U S WEST's responsibilities separately where U S WEST is treated differently. Unless good cause can be shown, the rules should be followed. "Good cause" in this instance should be limited to exclude those arguments that the Commission previously considered in the rulemaking proceeding.

9. This order does not define terms relating to dialing parity or equal access presubscription; these and other terms are defined in ARM 38.5.4102. We address the four general subtopics of intraLATA equal access implementation below:

A. Carrier Notification

10. ARM 38.5.4120(3) requires that U S WEST 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 the presubscription must respond to U S WEST within 30 days. Further, U S WEST may not allow participation by unregistered telecommunications providers.

11. Section 2.I.2.a of U S WEST's plan states that it will notify all registered interexchange carriers operating in Montana no less than 120 days prior to implementation. It states that the notification will include its anticipated implementation schedule, ordering procedures, and terms and conditions for an interexchange carrier to participate in intraLATA equal access. Carriers without existing Feature Group D service must follow the normal access service request process. U S WEST will provide a copy of the Carrier Participation Notice to the Montana Consumer Counsel (MCC). Any changes in the schedule will be communicated by industry letter. U S WEST's proposed Carrier Participation Notice was attached to the plan as Attachment B.

12. U S WEST's plan provides that it will acknowledge receipt of requests from all carriers responding to the notice within 72 hours, but will permit carriers to request participation

(by fax) for 90 days after it sends the notice to them. This does not comply with ARM 38.5.4120(3), which permits only 30 days for response. The 30 days allowed by the rule is more than adequate time for interexchange carriers to respond to U S WEST's notification, particularly since the notice requires them to fax a reply to U S WEST. Moreover, according to the deadline for carrier participation established in the Commission's rule, U S WEST still has 90 days before implementation of intraLATA equal access. It is critical that U S WEST have this information early enough to include the participating interexchange carriers' names and telephone numbers in their customer notification. Therefore, U S WEST's Carrier Participation Notice shall require that interexchange carriers respond to U S WEST within 30 days. The form included with the Carrier Participation Notice shall also include a request for the carrier's name as it should be listed on U S WEST's notice to customers, and the toll free telephone numbers for residential and business customers to contact that carrier to change their intraLATA provider.

13. U S WEST's proposal for carrier notification is approved with these modifications. U S WEST shall include updated carrier notification documents when filing its revised plan pursuant to this Order.

B. Customer Notification

14. Customer notification is addressed in several of the Commission's rules. ARM 38.5.4120(1)(b) states that U S WEST's plan must describe how notification to end users will be carried out and must include the language U S WEST will use in its customer notification letter and describe the manner of distribution of such letter. U S WEST implemented interLATA equal access after the AT&T divestiture in the 1980s. Unlike the implementation of interLATA dialing parity or the concurrent implementation of interLATA and intraLATA dialing parity, ILECs are not required to conduct balloting when intraLATA equal access is implemented. Although balloting is not required in this plan, U S WEST must provide sufficient notification and educational information to its end users.

15. Customer education and presubscription procedures are set forth in ARM 38.5.4101. ARM 38.5.4105(4) requires all informational materials, forms and scripts to be "complete, clear and unbiased." It requires ILECs to promptly make any changes required by the Commission before using them. ARM 38.5.4105(4). At least 30 days prior to its scheduled implementation, U S WEST must provide written information to its end user customers. The written notification provided pursuant to ARM 38.5.4104 shall describe intraLATA dialing

parity and explain the presubscription procedures. The information provided pursuant to ARM 38.5.4104 shall also inform customers with existing interLATA PIC freezes on their accounts that their freeze will also apply to their existing intraLATA toll carrier—in this case, U S WEST—until the end users take action to change it.

16. Any new customers who commence local service after the mailing to existing customers and before equal access presubscription is implemented shall also receive a copy of the written information from U S WEST. For new customers who begin service on or after the date of implementation, U S WEST must inform them of their carrier selection options at the time that service is requested. These customers may select both their primary interLATA and intraLATA carriers or be assigned no PIC status. ARM 38.5.4116 provides for some safeguards to apply to the business office practices U S WEST will use when it implements intraLATA equal access. These safeguards are discussed in more detail below.

17. U S WEST's implementation plan states that end user notification will be in the form of a bill insert if U S WEST receives FCC approval of its § 271 filing "in a timely manner." In that instance, U S WEST would begin end user notification 60 days prior to the proposed implementation date. This would be done throughout one complete monthly billing cycle with the final mailing to occur 30 days in advance of implementation. However, if U S WEST has not received FCC approval as now appears highly likely, U S WEST proposes to notify end users by publishing legal notice in major Montana newspapers prior to implementation and then would provide the bill insert notification "as soon as possible after implementation."

18. U S WEST's proposed bill insert would include the following language:

#### **NOTICE OF ALTERNATIVES FOR INTRALATA CALLING**

Effective (date), you may select the company you want to handle your Montana intraLATA long distance calling. Montana is divided into two local long distance calling areas known as LATAs. Currently, U S WEST Communications is the only provider of 1+ directly dialed calls within each of these calling areas. Whichever company you choose, you won't have to dial additional digits to place these types of long distance calls.

If you choose to make a change, that change will only apply to calls made within your local long distance calling area. This change will have no impact on the long distance calls you place to locations outside of your local long distance calling area.

If you do not elect to make a change, your 1+ direct dialed local long distance calls will continue to be provided by U S WEST Communications as they are today.

This change has been approved by the Montana Public Service Commission.

19. U S WEST's proposed end user notification does not comply with the Commission's rules in several respects. First, U S WEST proposes to publish legal notice in major Montana newspapers prior to publication and to notify end users directly only *after* it has implemented intraLATA equal access, now scheduled for February 4, 1998. This is not consistent with the requirement that end users be notified no less than 30 days prior to implementation. It raises questions of bias and does not fulfill the requirement that notice be clear and complete.

20. The Commission concludes that general end user notification should comply with ARM 38.5.4104 and shall be completed at least 30 days prior to the scheduled implementation. The only acceptable exception to this requirement concerns new customers who establish service too late to be included in the general notification. U S WEST may notify these customers in one mailing to be completed on or about February 4, 1999, the scheduled date for implementation. This mailing should contain substantially the same information as the prior mailing to existing end users.

21. Second, U S WEST's proposed notice does not include information about PIC freezes. ARM 38.5.4104(1) requires U S WEST to include information about PIC freezes in its written notification to customers. The written notice must advise customers with existing interLATA PIC freezes on their accounts that their freezes will also apply to U S WEST as their intraLATA carrier when intraLATA dialing parity is implemented. It must also advise them that they must take action if they wish to change to another carrier for intraLATA calls. U S WEST has not included any such information in its proposed notice.

22. Third, ARM 38.5.4104(1) further requires that the written notice describe dialing parity and explain presubscription procedures. Although U S WEST's proposed notice adequately describes dialing parity, it does not explain presubscription procedures, except to the extent it educates end users that their calls will continue to be provided by U S WEST if they do not elect to make a change. Further, it does not explain clearly that customers may opt for two different long distance carriers, neither of which is U S WEST.

23. The Commission's rules require that the information provided to end users be clear and complete and unbiased. In order to meet this standard, U S WEST's notice must contain additional information explaining presubscription procedures. The Commission concludes that the notice must advise end users that they may change their intraLATA PIC once free of charge during the first 90 days following implementation. The notice may also include information that after the 90-day waiver period has expired, there will be a \$5.00 charge to change one or both PICs.

24. The Commission will require other additional information to meet the clear, complete and unbiased standard. U S WEST must include a list of all participating registered interexchange carriers who have responded during the 30-day period following U S WEST's notice to them concerning the opportunity to participate in intraLATA dialing parity. The notice must also include their toll free telephone numbers. By eliminating balloting for implementation of intraLATA dialing parity, the customer is not requested to take affirmative action to choose a carrier. However, if the customer wishes to change from U S WEST, the notice as proposed provides no procedures for doing so, and, although the title of the notice refers to "alternatives for intraLATA calling," no such alternatives are listed.

25. U S WEST's plan also provides for contact handling of calls from customers who wish to change their intraLATA PICs. U S WEST proposes to require customers to contact the carriers they wish to change to if customers request information about a carrier other than U S WEST. By listing the names of participating carriers on the notice to end users, end users will have the information they need and will not have to make additional calls to U S WEST.

26. In order to explain presubscription procedures, the notice should include the following language: "If you wish to choose another provider for your calls within your local long distance calling area, you may contact U S WEST or one of the following participating carriers" (followed by the list).

27. There are many interLATA long distance carriers operating in Montana and most of these carriers are resellers. Although many of them may elect to participate in intraLATA presubscription, that participation is certainly not assured. End user customers may be confused if the notice advises them that they can now presubscribe to another carrier, yet their primary interLATA long distance carrier cannot provide this service. This confusion can be avoided if sufficient information is included in U S WEST's notice to end users. It is important for end

users to know whether their interLATA carrier will also provide 1+ intraLATA calling. In addition to the list of providers, the Commission also requires that U S WEST include a map showing the LATAs in Montana.

C. Other Consumer Issues and Business Office Practices

28. ***Letters of authorization and end user requests to change the intraLATA PIC:*** ARM 38.5.4116(1)(e) provides that U S WEST shall not accept letters of authorization (LOAs) from a competitor earlier than 60 days prior to implementation. U S WEST's plan states that at the time of implementation of intraLATA dialing parity, the date on a LOA must be no earlier than 60 days prior to the scheduled implementation date. The plan further provides that U S WEST will begin accepting and processing orders received from the carriers on the implementation date. It also provides that U S WEST's customer contact personnel will begin accepting requests from end users for intraLATA PIC changes on the date of implementation.

29. During the intraLATA dialing parity rulemaking proceeding, U S WEST urged the Commission to accept a proposed amendment to the rule which would preclude submission of LOAs if they were dated earlier than 30 days prior to the implementation date. The Commission stated in a response to comments on the proposed rule allowing 60 days prior to implementation for submitting LOAs as follows:

Subsection (1)(e) provides that LOAs shall be accepted no earlier than 60 days prior to the implementation date. This provision applies to carriers and customers alike and is a reasonable compromise between extreme positions taken in former comments. . . . [A] requirement that LOAs must be dated within the 30 days prior to the implementation date places an unreasonable restriction on the LEC's competitors.

30. U S WEST's plan would unreasonably limit the competitors to less than 60 days. In addition to placing this unreasonable restriction on competitors, U S WEST's plan also attempts to unreasonably restrict customers from requesting a change in intraLATA carrier prior to implementation.

31. U S WEST is required to provide advance notice to end users as discussed above. The notice advises end users that they may change their intraLATA toll carrier and must be mailed no later than 30 days prior to implementation. Some customers may wish to request a change immediately. Customers should not be limited to a time less than is permitted competitive intraLATA toll carriers. U S WEST shall accept all requests to change the

intraLATA carrier beginning 60 days prior to the scheduled implementation, whether they are initiated by an interexchange carrier or by the end user. Further, U S WEST shall accept LOAs without restriction as to the dates they are signed.

32. ***Handling customer contacts:*** ARM 38.5.4116 provides for safeguards to ensure that the development of intraLATA competition will not be impeded by practices of the ILEC following equal access presubscription. Subsection (1)(a) requires that U S WEST's customer information and procedures used to provide new customers information about their carrier selection options when they sign up for service be competitively neutral and approved by the Commission prior to their use.

33. U S WEST's plan states that U S WEST will inform new local exchange end users of their right to select the intraLATA carrier of their choice and will agree to take the end user's order for the intraLATA carrier they select. It further states that U S WEST will inform new subscribers that U S WEST is a provider of intraLATA service, and, during the negotiation of new service, U S WEST will actively promote all its products. This does not exclude U S WEST's intraLATA toll service offerings. Only if requested will U S WEST provide, in random order, the names of all carriers providing intraLATA interexchange service in its area. If a new service subscriber does not select an intraLATA carrier, no carrier will be assigned and the subscriber will be directed to call the carrier of his or her choice. U S WEST's proposal is anticompetitive and discriminatory.

34. For all customer-initiated contacts regarding local service matters, ARM 38.5.4116(1)(b) includes important safeguards. It provides, "When handling customer-initiated contacts regarding local service matters such as a change in service, [LEC] business office personnel may not engage in promotional efforts for the local exchange carrier's toll service offerings." Subsection (1)(c) further provides that when a customer contacts a LEC's business office to change the PIC from the LEC to a competitor, "the transaction must be handled in a neutral manner (i.e., in the same manner as a PIC change from one competitor to another)." ARM 38.5.4116 was adopted after consideration of comments advocating both the ILEC and competitor points of view.

35. U S WEST's proposal reflects its unsuccessful arguments in the Commission's rulemaking proceeding. In that proceeding, U S WEST opposed any restrictions placed on its personnel in marketing its service options and proposed to engage in promotional efforts for its

own toll service offerings if the customer agreed to hear about them. It further proposed that it would do so where U S WEST deemed it would be beneficial to the end user or where the end user indicated a willingness to hear about U S WEST's intraLATA toll services.

36. The Commission noted in response that U S WEST was in the unique position of being the dominant intraLATA toll carrier and the dominant local exchange carrier. Until the major purpose of the Telecommunications Act of 1996—local service competition—is achieved, U S WEST and other ILECs will have the advantage of numerous opportunities for customer contact which could result in an unfair competitive advantage if no restrictions are implemented. The Commission noted that ILECs will receive numerous customer-initiated contacts in their business offices for many reasons that do not relate to intraLATA toll and that they should not be restricted from marketing their toll offerings when they receive customer-initiated calls which specifically request information on intraLATA toll. However, the rule as adopted prevents the incumbent LEC with monopoly power from obtaining further competitive advantage over its competitors who lack comparable opportunities.

37. U S WEST may not engage in promotional efforts for its toll service offerings when handling customer-initiated contacts regarding local service matters such as a change in service. ARM 38.5.4116 does not specifically define the sort of calls where U S WEST may not engage in marketing efforts for toll service offerings. The Commission concludes that changes in service which should be restricted include a customer moving from one address to another (T (to) and F (from) orders), customer-requested changes in telephone numbers, and customer-initiated PIC change requests.

38. The Commission further concludes that when a customer contacts U S WEST for new local exchange service, U S WEST shall inform the customer that he or she may select both an interLATA and an intraLATA PIC, and that if no PICs are chosen, the customer will be required to use access codes when placing long distance calls. This initial request for local exchange service is not an opportunity to market the LECs toll offerings; that, in fact, is not permitted by the Commission's rules. U S WEST shall offer to read the random list of carriers for both types of toll. U S WEST should be included in the random list of intraLATA toll providers. Aside from including its name in the random list of intraLATA carriers (and interLATA carriers when U S WEST is permitted to enter that market), U S WEST is restricted from all marketing and promotional efforts for its own toll service offerings during these calls.

The only permitted reference to U S WEST's long distance offerings is in the reading of the list of carriers providing service.

39. The following safeguards are required and necessary to ensure that U S WEST's contact handling is unbiased: (1) When a customer requests additional information about a specific PIC, U S WEST's representatives shall refer the caller to that carrier; (2) When a customer calls U S WEST to request a PIC change, U S WEST may not mention its toll service offerings other than by reading its name with others on a random list; (3) When a customer calls U S WEST to request a PIC change, U S WEST shall process the order without referring the customer to the requested carrier unless the customer has questions about another carrier's services; and (4) U S WEST shall rotate the order of the random list at least once a month.

40. *Scripts*: ARM 38.5.4105(4) requires U S WEST to provide proposed scripts to the Commission for review as part of its implementation plan. The rule requires that scripts be filed so that the scripts can be reviewed by the Commission prior to approval of the plan or modification. U S WEST filed a one-page contact handling guide for new connects, but provided no scripts. U S WEST's plan states, "U S WEST maintains, and as this commission has previously ruled, that business office 'scripts' are proprietary." Section 2.K, Policies and Practices, *citing Application of Citizens Telecommunications Company of Montana for approval of an IntraLATA Toll Dialing Parity Implementation Plan*, Docket No. D97.3.48, Order No. 5988a (Sept. 15, 1997).

41. This Commission addressed the issue of providing scripts to competitors in Order No. 5988a. However, we did not rule, as U S WEST states in its plan, that business office scripts are proprietary. Order No. 5988a provides in pertinent part:

8. The Commission is mindful of its obligation under both state and federal law to ensure that competition in Montana develops without favoring particular competitors. As part of that responsibility, the commission will review the scripts to ensure competitive neutrality if a request is made for such review. The scripts will not be considered proprietary without a proper showing by CTC-Montana that they should be considered as such. If the Commission determines they are competitively neutral, any further concerns that AT&T or others may have regarding information that is provided to customers by CTC-Montana's customer representatives can be addressed through the Commission's complaint process. (Emphasis supplied.)

The Commission specifically ruled that the scripts for Citizens would *not* be considered proprietary without an appropriate showing. The Citizens order was issued before the Commission completed the intraLATA dialing parity rulemaking. Nothing in the dialing parity rules changes this Commission ruling. Further, the information contained in scripts will be accessible at the time of dialing parity implementation as soon as U S WEST representatives begin handling contacts. The Commission concludes that scripts for handling customer contacts are not proprietary. U S WEST shall file its scripts along with its revised implementation plan. Customer scripts will not be considered proprietary.

42. U S WEST 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, specifically those referred to above. U S WEST’s one-page new service contact handling guide does not comply with the rule. U S WEST shall submit the full text of all proposed scripts for handling customer contacts consistent with this order no later than October 15, 1998 for Commission review prior to handling such calls.

43. ***Order Processing:*** U S WEST’s plan states that U S WEST’s presubscription system cannot mechanically receive and hold intraLATA orders from interexchange carriers, and that U S WEST will initiate steps to develop a temporary storage database to receive orders manually from the interexchange carriers. The plan further states that if the new process is not in place at the time of implementation, U S WEST will request a waiver from the date of implementation until the programming for the storage database can be designed, programmed, tested and implemented.

44. The processing of intraLATA PIC change orders is critical to developing intraLATA competition and should not be unreasonably delayed. U S WEST’s plan contains limited information, vague in nature, about how U S WEST will process such orders expeditiously. U S WEST shall submit additional information by October 15, 1998 to advise the Commission how this process will be conducted and update information about its proposed temporary storage database.

45. ***Billing Name and Address Information:*** ARM 38.5.4105(2) provides that the LEC shall make available to all registered carriers who intend to offer intraLATA equal access presubscription a complete list, upon request, of the primary toll carrier's customers by name, telephone number and address. The carrier receiving the list shall use such lists only to solicit presubscription to its own end user subscribers of record and no longer than 180 days following dialing parity implementation. Any charges for such lists must be cost based and nondiscriminatory.

46. Section 2.N of U S WEST's plan states that U S WEST will make available to all registered interexchange carriers, upon request, a list of that carriers' subscribed customers. The plan also states that the lists will be provided using the same cost based structure U S WEST uses today to provide such listings in the interLATA arena. U S WEST does not explain that cost based structure.

47. The Commission's rule is consistent with 47 C.F.R. § 1201(c)(1)(ii), and the reasoning therefor explained at length in the Commission's response to comments in the intraLATA dialing parity rulemaking proceeding. U S WEST's proposal here is the same as it advocated in the rulemaking proceeding. As noted in the Commission response to Comment No. 16, bulk disclosure is permitted by the FCC rule for activities associated with the initial conversion to equal access in a particular central office and the manner in which the LEC uses customer information itself for marketing purposes is how it should be made available for use by other carriers, subject to statutory and state and federal commission time limitations.

48. If requested, U S WEST is required to provide complete customer lists to registered interexchange carriers. Without reviewing the cost basis for prices U S WEST will charge for this service, it is not possible to determine if they are nondiscriminatory as ARM 38.5.4105(2) requires. U S WEST's proposal to use the same structure it currently uses to provide listings to interLATA carriers is not approved. The Commission will review the cost structure upon request for compliance with Commission rules.

49. ***Discontinuance of Service:*** U S WEST's plan at Section 2.O proposes that the Commission adopt additional policies for dealing with events such as a toll carrier's filing for bankruptcy or abrupt discontinuance of service. U S WEST has also included these policies as part of its draft tariff language. U S WEST proposes to require a carrier who discontinues provision of presubscribed intraLATA service to notify its end users and their local exchange

companies. The carrier would be responsible for paying the PIC change charges to change the end users to another carrier and for notifying end users that they must select a new carrier. U S WEST would then provide intraLATA service if a carrier discontinues providing intraLATA toll until the end user makes another selection.

50. The Commission concludes that U S WEST's proposal should not be approved. While it is important to protect the public from unscrupulous competitors, it is not appropriate to include policy decisions which will not only affect the public, but also competing interexchange carriers, in a tariff approved for U S WEST when there has been no opportunity to fully develop this issue. Moreover, with a competitive market, the Commission should lessen regulation rather than increase it. Many carriers provide intraLATA and interLATA toll to end users. To sign up a new customer, most are willing to pay the PIC change charge for the end user. Many carriers go far beyond that in their attempts to acquire new subscribers. The Commission does not consider it appropriate to permit U S WEST to charge the exiting carrier to leave the market.

51. One important factor in developing competitive markets is the ease of exit and entry. Imposing a charge to exit the market is not consistent with that goal and is not practical in the case of bankruptcy. U S WEST's proposal also is discriminatory. It would not apply when the exiting carrier's customers migrate to another carrier in a manner that does not require U S WEST to change the end users' records (e.g., resellers with the same PIC designation as another carrier). It also would not apply when another carrier elects to pay the charge on behalf of the canceling carrier. It may be appropriate to require the exiting carrier to contact all of its subscribers, but it is not appropriate to provide for that in U S WEST's tariff.

52. U S WEST's tariff would also require exiting carriers to inform end users that they should contact U S WEST to select a new intraLATA carrier. A preferable and more competitively neutral notification would request that end users contact the intraLATA long distance carrier of their choice and would provide a list of such carriers or refer the end users to U S WEST to request a list of such carriers. The Commission rejects draft tariff section 12.3.3.B.4, entitled "Cancellation of Interexchange Participation for Presubscription."

D. Implementation Costs

53. ARM 38.5.4115 sets forth some general requirements for cost recovery by the LEC. IntraLATA equal access presubscription costs incurred by the LEC shall be divided by the projected annual total of all switched intraLATA originating minutes of use (including the

LEC's) to arrive at a per minute of use rate. U S WEST must impute the equal access implementation costs attributable to its own intraLATA minutes of use in its end user rates.

54. Recoverable costs include initial incremental expenditures for hardware and software related to providing presubscription that would not be required to upgrade the switching capabilities of the office if equal access presubscription were not required. They may include administrative costs incurred for approved customer education and presubscription efforts, training costs related to intraLATA dialing parity, modifications to information billing systems to accomplish intraLATA dialing parity, and the cost of capital for the duration of the recovery period. U S WEST may recover only actual costs.

55. Costs are recoverable over a three-year period, or at the LEC's option with Commission approval, some costs may be recovered over the three-year period and some costs may be expensed in the current year if they can be reasonably expected to occur only in the first year. Costs shall be recovered from all providers of intraLATA toll service in the involved exchanges through a charge and imputation of such charge applicable to all switched intraLATA minutes of use originating in the exchanges which are subject to intraLATA presubscription. The cost recovery process must use periodic true-ups based on actual LEC-incurred implementation costs and actual traffic volumes subject to the presubscription surcharge.

56. ARM 38.5.4120 requires U S WEST's dialing parity 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.

57. U S WEST's plan states that the majority of the costs related to dialing parity implementation can be grouped into three categories—switch costs, support systems, and customer notification/internal training and education. Certain costs for implementing dialing parity are common to two or more states; U S WEST proposes to allocate these common costs to each state on a weighted per access line basis. On page 15 of the plan, U S WEST proposes to recover the majority of implementation costs over a three-year period, through a new rate element referred to as the Equal Access and Network Reconfiguration Recovery Charge (EANRC) to be assessed to all carriers based on each carrier's total intraLATA originating minutes. U S WEST's proposed tariff page, however, states that it will be assessed based on the total number of *intrastate access minutes of use* and to U S WEST based on its total intraLATA originating minutes of use.

58. For recovery of initial PIC change costs incurred during the 90-day waiver period and the costs associated with modification of the LOA tracking process, U S WEST's plan proposes to recover costs by assessing a bulk bill to all carriers. U S WEST also proposes that its cost projections will be subject to revision by the end of the second plan year and be adjusted accordingly.

59. U S WEST's plan provides for cost recovery in the current year of initial PIC change costs during the 90-day waiver period and costs associated with modification of the LOA tracking process. U S WEST would bill each carrier based on the number of access lines that switch to that carrier. The plan states that "U S WEST will assess a per line charge for an ILP PIC change as approved in other states. Although the plan does not specify, it appears that U S WEST intends to multiply the number of lines times the \$5.00 PIC change charge and assess the resulting total to each carrier after the 90-day period expires. The Commission notes that not all states have allowed U S WEST to recover PIC change costs incurred during the waiver period in this manner and based on a \$5.00 PIC charge.

60. Although it may be reasonable to assess charges for PIC changes that have been waived to the carrier who acquires the end user during that period, the Commission's rules require recovery of actual costs over a three-year period. ARM 38.5.4115 permits the LEC to expense some costs in the first year if they can be reasonably expected to occur only in the first year. U S WEST has not demonstrated to this Commission that the \$5.00 PIC change charge is cost-based. Therefore, the Commission will not approve a bulk billing to all carriers based on the \$5.00 charge.

61. U S WEST's proposal to treat costs associated with modification of the LOA tracking process in the same manner as PIC change costs is mystifying. U S WEST has not included any information in the plan or its cost studies to establish what such costs are or why they should be treated in the same manner as PIC change costs. Particularly critical for such cost recovery is a demonstration that such costs should not be allocated to all other carriers and imputed to U S WEST.

62. U S WEST's plan also would permit end users to change their intraLATA carrier one time at no charge within 30 days from the date of new service installation. There is no explanation of this waiver in the plan. The Commission believes that new end users should be

subject to the same waiver period as existing end users, ending 90 days after implementation. However, any waiver that would continue following that 90-day period is not an appropriate inclusion in U S WEST's implementation plan and certainly is not appropriate for ongoing cost recovery from other carriers. The Commission supports waiving the charge for selection of both the interLATA and intraLATA carrier within thirty days if the new end user does not make an initial selection, but not for a change in carrier except during the waiver period.

63. U S WEST's plan also states that its cost projections will be subject to revision by the end of the second plan year and be adjusted accordingly. ARM 38.5.4115(4) requires that U S WEST's cost recovery process use periodic true-ups, based on actual incurred costs and actual traffic volumes subject to the presubscription surcharge, to ensure against either overcollection or undercollection of recoverable costs. The Commission concludes that such true-ups should occur annually over the three-year recovery period and that there should be an additional true-up when a determination has either been made or stipulated to by the carriers involved as to the actual cost of the PIC changes during the waiver period.

### **OTHER CONCERNS**

64. U S WEST has not answered the Commission staff's questions concerning its method of providing the random list of carriers to end users and has not explained how this list will be rotated. U S WEST should include detailed information when it submits a revised implementation plan.

65. The Commission also notes an apparent mistake on proposed tariff page 12.1, Access Service Tariff. Section 12.3.3.B.1.c provides, "Subsequent to the 90 day waiver period following installation of Telephone Exchange Service, Switched Access Lineside connection, Centrex-type service or PAL service . . ." The Commission believes that this was meant to state, "Subsequent to the 90 day waiver period following implementation of 1+ intraLATA presubscription . . ." or similar language.

### **ORDER**

THEREFORE, based on the foregoing, IT IS ORDERED that

1. U S WEST's intraLATA dialing parity implementation plan is not approved;

2. U S WEST shall notify all registered interexchange carriers no later than 120 days prior to its scheduled implementation date of their opportunity to participate in intraLATA equal access presubscription consistent with the discussion supra; and

3. U S WEST shall resubmit its dialing parity implementation plan reflecting the discussion herein by October 15, 1998 and mail a copy of its plan to all persons on the Commission's general telecommunications service list.

The Commission will accept comments on U S WEST's revised plan until the close of business on October 30, 1998. Such comments should address sections of the plan that are inconsistent with the Commission's dialing parity rules at ARM 38.5.4101 through 38.5.4120, or sections which are incomplete or omitted.

DONE AND DATED this 28th day of September, 1998, by a vote of 4-0.

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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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 with ten (10) days. See ARM 38.2.4806.