

Service Date: March 15, 2000

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

IN THE MATTER OF the Application of	)	UTILITY DIVISION
BridgeBand Communications, Inc. and	)	
U S WEST Communications, Inc.	)	DOCKET NO. D99.6.146
Pursuant to Section 252(e) of the	)	
Telecommunications Act of 1996 for	)	ORDER NO. 6193b
Approval of their Service Resale Agreement	)	

**ORDER ON RECONSIDERATION**

Background

1. On September 17, 1999, the Montana Public Service Commission (Commission) issued Supplemental Order No. 6193a in this docket, rejecting the last two sentences of Section (D)1.1.4 of the BridgeBand/U S West Agreement. Those sentences read:

In order to address issues around warehousing of space, the original collocator will not be allowed to charge the shared occupant a per square foot charge in excess of the rate that the original collocator is presently charged by U S West. There are some limitations set on the original collocator as to rates and terms of the arrangement such as a per square foot charge not exceeding the recurring amount that U S West is charging.

2. The Commission reasoned that, "this provision would disallow . . . BridgeBand from sub-leasing central office space to subsequent collocators, at a price in excess of [that which BridgeBand] has agreed, in those instances where physical collocation is not possible because central office space has been exhausted." The Commission found that the provision had the potential to discriminate against carriers not party to the Agreement, and was not in the public interest.

3. On October 8, 1999 U S West filed a Motion for Reconsideration [or] Request for Rehearing, asking the Commission to reconsider its decision to reject the collocation provision at (D)1.1.4 of the Agreement. U S West argued in its Motion, and in an accompanying affidavit of Dennis Pappas, that the rejected language does not

discriminate against carriers not party to the agreement. Rather, according to U S West, the rejected provision "is necessary to prevent anti-competitive conduct by the first collocating company, and to prevent subsequent collocators from having to pay discriminatory rates for collocation space." Motion at 2. U S West also argued that, because collocation space is scarce, early collocators must not be able to acquire space with a design to charge later collocators, in a sublease, more than those collocators would have to pay U S West. U S West claimed in addition that charging all collocators the same price is fair and not discriminatory.

#### Discussion

On reconsideration the Commission concurs with U S West that it is not in the public interest, or in the interest of furthering competition, to allow a collocator to control entry into central office space. Also, the Commission finds that the rejected provisions do not discriminate against entities not party to the Agreement, because all collocators will be treated equally, both in the provisioning of scarce space, and in the price charged for the space.

#### Conclusions of Law

The Commission adopts by reference the Conclusions of Law at Order No. 6193 in this docket.

#### Order

U S West's Motion for Reconsideration is granted. Section (D)1.1.14 of the U S West/BridgeBand Agreement does not discriminate against carriers not party to the Agreement and is otherwise in the public interest.

DONE AND DATED this 25th day of January, 2000, 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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GARY FELAND, Commissioner

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BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson  
Commission Secretary

(SEAL)