

Service Date: September 17, 1999

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

IN THE MATTER OF the Application of)	UTILITY DIVISION
Computer Business Sciences, Inc. and)	
U S WEST Communications, Inc.)	DOCKET NO. D99.6.152
Pursuant to Section 252(e) of the)	
Telecommunications Act of 1996 for)	ORDER NO. 6196
Approval of their Service Resale Agreement)	

FINAL ORDER

I. Introduction and Procedural Background

1. On February 8, 1996, the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (the 1996 Act) was signed into law, ushering in a sweeping reform of the telecommunications industry that is intended to bring competition to the local exchange telecommunications market. The 1996 Act requires companies like U S WEST Communications, Inc. (U S WEST) to negotiate agreements with new competitive entrants in their local exchange markets. 47 U.S.C. . . 251(c) and 252(a).

2. U S WEST and Computer Business Sciences, Inc. (CBS) negotiated an interconnection contract after CBS requested contract negotiations. The agreement is entitled "Local Interconnection Agreement Between U S WEST Communications, Inc. and Computer Business Sciences, Inc. for Montana" (Agreement). U S WEST submitted the interconnection agreement to the Montana Public Service Commission (Commission) for approval on June 17, 1999. The parties' Agreement was reached through voluntary negotiations and requires Commission approval prior to implementation pursuant to 47 U.S.C. . . 252(e). The Commission must approve or reject the Agreement no later than September 14, 1999--90 days following the request for approval--or it will be deemed approved. 47 U.S.C. . . 252(e)(4).

3. On June 22, 1999, the Commission issued a notice entitled Notice of Application for Approval of the Wireline Interconnection Agreement and Opportunity to Intervene and Comment. The notice established July 5, 1999 as the deadline for intervention and limited

intervenors to addressing the grounds for Commission action identified in Section 252(e)(2)(A) of the Act. The Notice stated that no public hearing was contemplated by the Commission unless requested by an interested party by July 5, 1999. The Notice further stated that comments were required to be filed no later than July 15, 1999.

4. The Notice published by the Commission in this proceeding advised interested parties in the geographic areas affected by the Agreement that intervention in the proceeding was limited and that the Montana Consumer Counsel (MCC) could be contacted to represent consumer interests. The MCC neither requested intervention nor filed comments. The Commission received no comments.

5. Upon review of the Agreement, the Commission makes the following findings, conclusions and order.

II. Applicable Law and Commission Decision

6. The Interconnection Agreement between U S WEST and CBS provides for, *inter alia*: interconnection by means of collocation, entrance facilities, or meet point arrangements; the exchange of traffic between U S WEST and CBS; compensation for transport and termination of such traffic; the use of interim and permanent Number Portability; the purchase of U S WEST's retail services for resale; the acquisition of unbundled network elements from U S WEST; CBS customer access to operator assistance, Directory Assistance and E911 service; access to poles, conduits and rights-of-way; access to operational support systems and myriad other arrangements necessary for CBS's provision of competitive local exchange services.

7. The Commission must approve or reject the parties' agreement, with written findings as to any deficiencies, no later than September 14, 1999. 47 U.S.C. . . 252(e)(1) and (4). Section 252(e)(2)(A) limits the grounds for rejection of an agreement reached by voluntary negotiation:

- (2) GROUND FOR REJECTION - The State commission may only reject--
 - (A) an agreement (or any portion thereof) adopted by negotiation under [47 U.S.C. . 252(A)] if it finds that:
 - (i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or
 - (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity.

8. Notwithstanding the limited grounds for rejection in 47 U.S.C. . 252(e)(2)(A), the state commission's authority is preserved in . 252(e)(3) to establish or enforce other requirements of state law in its review of arbitrated or negotiated agreements, including requiring compliance with state telecommunications service quality standards or requirements. Such compliance is subject to . 253 of the 1996 Act which does not permit states to permit or impose any statutes, regulations, or legal requirements that prohibit or have the effect of prohibiting market entry.

9. Unlike an agreement reached by arbitration, a voluntarily negotiated agreement need not comply with standards set forth in . . 251(b) and (c). Significantly, standards set forth in . 251(c) and which this agreement may have been negotiated "without regard to" include the following:

- (c) **ADDITIONAL OBLIGATIONS OF INCUMBENT LOCAL EXCHANGE CARRIERS.** --In addition to the duties contained in subsection (b), each incumbent local exchange carrier has the following duties:
- (2) **INTERCONNECTION.**--The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network--
- (A) for the transmission and routing of telephone exchange service and exchange access;
 - (B) at any technically feasible point within the carriers' network;
 - (C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate or any other party to which the carrier provides interconnection; and
 - (D) on rates, terms and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252.

47 U.S.C. . 251(c). This section and . 252(a)(1) of the Act permit parties to agree to rates, terms and conditions for interconnection that may not be deemed just, reasonable and nondiscriminatory, and which are not determined according to the pricing standards included in . 252(c) of the Act, as would be required in the case of arbitrated rates set by the Commission. By approving the Agreement, the Commission does not intend to imply that it approves of all the terms and conditions included in the Agreement and makes no findings herein on the

appropriateness of many of the terms and conditions. Our interpretation of the 1996 Act is that . . . 252(a) and (c) prevent the Commission from addressing such issues in this proceeding.

10. No comments have been received that express any reservations about the parties' Agreement not complying with federal law as cited above or with state telecommunications requirements. The MCC, who represents the consumers of the State of Montana, has not intervened or filed comments that indicate that he believes that the Agreement is not consistent with the public interest, convenience and necessity. No other telecommunications carrier has filed comments to indicate that the Agreement is discriminatory toward a carrier not a party to the Agreement.

11. The Agreement contains some provisions which allow for corrections to the Agreement to reflect the outcome of other Commission proceedings for pricing, service standards, or other matters covered by the agreement.

12. When parties execute an interconnection agreement and one or both parties submit it to the Commission for approval, the Commission must approve or reject it (in whole or in part) according to the standards in . 252 of the 1996 Act--to determine if it discriminates against a carrier not a party to the agreement or is inconsistent with the public interest, convenience and necessity. The Commission can reject portions of the agreement, but it cannot require additional provisions.

13. However, states may "impose, on a competitively neutral basis, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers." 47 U.S.C. . 253(b). Prior Commission orders approving interconnection agreements have emphasized the importance of meeting the public interest requirement and in fact have rejected contract terms which fail to consider such. For example, the Commission rejected a term in several resale agreements that appeared to infringe on customer privacy and freedom of choice by permitting U S WEST to unilaterally determine that an account was "in arrears" and to refuse to transfer the customer to another carrier. *See, e.g., In the Matter of the Application of Citizens Telecommunications Company for Approval of its Resale Agreement With U S WEST Communications, Inc.*, Docket No. D96.11.191, Order No. 5962a (Feb. 10, 1997). In another docket, the

Commission rejected a section which provided for a creditworthiness database because it would permit credit information to be reported to a credit reporting agency without the customer's authorization. See In the Matter of the Application of Sprint Communications Company L.P. for Approval of its Interconnection Agreement with U S WEST, Docket No. D97.8.160, Order No. 6030 (Nov. 25, 1997). In numerous dockets, the Commission has rejected contract terms that do not provide for notification to the Commission if a reseller is subject to being terminated, do not provide for Commission notification if disputes arising from the contract are to be determined by an arbitrator that is not the Commission, and do not consider that U S WEST may have obligations to construct facilities that can legally be imposed upon it. The Commission has repeatedly rejected provisions that are not in the public interest.

14. With the exception of particular sections of the Agreement as specifically discussed below, the Commission finds that the parties' Agreement appears to conform to the standards required by the 1996 Act. On that basis the Commission approves the Agreement. In approving this Agreement the Commission is guided by provisions in state and federal law which have been enacted to encourage the development of competitive telecommunications markets. Section 69-3-802, MCA, for example, states that it is the policy of the State of Montana to encourage competition in the telecommunications industry and to provide for an orderly transition to a competitive market environment.

The Commission rejects the following terms:

15. Collocation – Section (D)1.1.4 contains the following provision: "In order to address issues around warehousing of space, the original collocater will not be allowed to charge the shared occupant a per square foot charge in excess of the rate that the original collocater is presently charged by USW. There are some limitations set on the original collocater as to rates and terms of the arrangement such as a per square foot charge not exceeding the recurring amount that USW is charging." Potentially, this provision would disallow the original collocater, in this case CBS, from sub-leasing central office space to subsequent collocaters, at a price in excess of that which the original collocater has agreed, in those instances where physical collocation is not possible because central office space has been exhausted. This provision

clearly has the potential to discriminate against a carrier not a party to the agreement and is not in the public interest.

16. Collocation – Section (D)2.1.16, second sentence, reads: "USW will not initiate construction of a second, separate collocation entrance facility solely for Collocation." Consistent with previous Commission orders, and with sections (B)2.12 of the Agreement, the language "unless otherwise required by law" should be added to this sentence.

17. Construction Changes – Section (G)12.2 reads: "All necessary construction will be undertaken at the discretion of USW, consistent with budgetary responsibilities, consideration for the impact on the general body of end users and without discrimination among the various carriers." Consistent with previous Commission orders, and with section (B)2.12 of the Agreement, the language "unless otherwise required by law" should be added to the beginning of this section.

III. 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. CBS intends to provide regulated interexchange telecommunications services in the State of Montana, and will also be regulated when it begins offering 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 the Interconnection Agreement negotiated by the parties and submitted to the Commission for approval according to 47 U.S.C. § 252(e) and § 69-3-839, MCA.

4. The United States Congress enacted the Telecommunications Act of 1996 to encourage competition in the telecommunications industry. Congress gave responsibility for much of the implementation of the 1996 Act to the states, to be handled by the state agency with

regulatory control over telecommunications carriers. *See generally*, the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (*amending* scattered sections of the Communications Act of 1934, 47 U.S.C. . 151, *et seq.*). 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.

5. 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.

6. Approval of interconnection agreements by the Commission 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. Section 252(e)(4) requires the Commission to approve or reject the U S WEST/CBS Agreement by September 14, 1999 or the Agreement will be deemed approved.

IV. Order

THEREFORE, based upon the foregoing, it is ORDERED that the interconnection Agreement of the parties, submitted to the Commission for approval pursuant to the 1996 Act, is approved and rejected as discussed herein, subject to the following conditions:

1. The parties may file an amendment to the Agreement without delay consistent with the Commission's decision in this proceeding.
2. The parties shall file subsequent amendments to this Agreement with the Commission for approval pursuant to the 1996 Act.

DONE AND DATED this 14th day of September, 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.