

Service Date: December 15, 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
Northwest Communications Networks, Inc. and)	
U S WEST Communications, Inc.)	DOCKET NO. D99.9.213
Pursuant to Section 252(e) of the)	
Telecommunications Act of 1996 for Approval)	ORDER NO. 6217
Of Local Wireline Network Interconnection and)	
Service Resale Agreement)	

FINAL ORDER

I. Introduction and Procedural Background

1. On February 8, 1996, the Telecommunications Act of 1996 (1996 Act)¹ was signed into law, ushering in a sweeping reform of the telecommunications industry that is intended to bring competition to the local exchange markets. The 1996 Act sets forth methods by which local competition may be encouraged in historically-monopolistic local exchange markets. The 1996 Act requires companies like U S WEST Communications, Inc. to negotiate agreements with new competitive entrants in their local exchange markets. 47 U.S.C. §§ 251 and 252.

2. U S WEST Communications, Inc. (U S West) entered into an interconnection agreement with Northwest Communications Networks, Inc. (Northwest) for interconnection and resale of U S West services according to the 1996 Act. U S West filed the parties' agreement, entitled "Agreement for Local Wireline Interconnection and Service Resale Between Northwest Communications Networks, Inc. and U S WEST Communications, Inc." (Agreement) with the Montana Public Service Commission (Commission) on September 14, 1999. The Agreement was docketed as D99.9.213 and it provides for interconnection and for Northwest to resell U S West's local exchange services in Montana.

¹ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (to be codified as amended in scattered sections of 47 U.S.C.).

3. The Commission issued a Notice of Application for Approval of Interconnection Agreement and Notice of Opportunity to Intervene and Comment on September 17, 1999, giving public notice of the requirements that the Commission must approve the Agreement unless it finds the Agreement discriminates against other telecommunications carriers not parties to the agreement, or is not consistent with the public interest, convenience and necessity. The notice stated that no public hearing was contemplated unless requested by an interested party by October 4, 1999. The notice further stated that interested persons could submit limited comments on whether the agreements met these requirements no later than October 13, 1999. No hearing has been requested and no comments or requests for intervention were received.

4. This Agreement is modeled after, and appears nearly identical to the Agreement for Local Wireline Network Interconnection and Service Resale Between AT&T Communications of the Mountain States, Inc. and U S WEST Communications, Inc., which the Commission approved, with exceptions, in Order No. 5961f, Docket No. D96.11.200. As explained below, the Commission will adhere closely to Order No. 5961f in this Order.

II. Applicable Law and Commission Decision

5. The standards for approving an interconnection agreement differ, depending on whether the agreement has been voluntarily negotiated or has been arbitrated by a state commission. 47 U.S.C. § 252(e)(2). The Agreement submitted for approval in this proceeding was negotiated voluntarily by the parties and thus must be reviewed according to the provisions in 47 U.S.C. § 252(e)(2)(A).

6. Section 252(e)(4) of the 1996 Act provides that a negotiated agreement submitted for a state commission's approval must be approved or rejected within 90 days or it will be deemed approved. Thus, Commission approval or rejection according to the standards set forth in the 1996 Act must issue by December 13, 1999, 90 days following the submission of the Northwest Agreement for Commission approval.

7. The Commission must approve or reject the agreement, with written findings as to any deficiencies. 47 U.S.C. § 252(e)(1). Section 252(e)(2)(A) prescribes 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 Commission's authority is preserved in § 252(e)(3) to establish or enforce other requirements of Montana 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 impose any statutes, regulations, or legal requirements that prohibit or have the effect of prohibiting market entry.

9. Unlike an agreement reached through arbitration, a voluntarily negotiated agreement need not comply with standards set forth in §§ 251(b) and (c). 47 U.S.C. §§ 251(b), 252(c) 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.

10. By approving this 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.

11. No comments have been received that indicate the Agreement does not comply with federal law as cited above or with state telecommunications requirements. The Montana Consumer Counsel, who represents the consumers of the State of Montana, has not intervened in this approval proceeding, and has not filed comments to indicate that any portion of the Agreement is not consistent with the public interest, convenience and necessity. There have been no objections raised that the Agreement discriminates improperly or is not consistent with the

public interest, convenience and necessity.

12. With the exception of particular sections of the Agreement as specifically discussed below, the Commission finds that the terms in the Agreement appear to conform to the standards required by the Act and should be approved. 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.

13. As noted above, this Agreement is nearly identical to the U S West/AT&T interconnection agreement which was approved in Order No. 5961f, Docket No. D96.11.200 (August 7, 1998). In Order No. 5961f² the Commission rejected several provisions of the U S West/AT&T agreement, but this Agreement in most cases does not appear to have been modified to conform to Order No. 5961f. The reason may be that the grounds for rejection are different for this Agreement than the U S West/AT&T agreement³, but if that is the case U S West and Northwest should have so argued in their application. As it stands, U S West and Northwest can, if they wish, make such argument, or others, on reconsideration of this Order.

The Commission addresses the following terms:

A. Amendment of Agreement: Part A-Page 23, Section 17

14. This Section of the Agreement reads as follows:

Except as otherwise provided in this Agreement, no amendment or waiver of any provision of this Agreement, and no consent to any default under this Agreement, shall be effective unless the same is in writing and signed by an officer of the Party against whom such amendment, waiver or consent is claimed. If either Party desires an amendment to this Agreement during the term of this Agreement, it shall provide written notice thereof to the other Party describing the nature of the requested amendment. If the Parties are unable to agree on the terms of the amendment within thirty (30) days after the initial request therefor, the

² Attached for the convenience of the parties.

³ See 47 U.S.C. § 252(e)(2).

Party requesting the amendment may invoke the dispute resolution process under Section 27 of this Part A of this Agreement to determine the terms of any amendment to this Agreement.

15. This section of the agreement provides for a process by which a party to the Agreement may voluntarily or involuntarily cause an amendment to this Agreement to occur. It also identifies which Parties must be notified of any proposed amendment to the Agreement. Conspicuously absent from this and from Section 27, which is referred to in the last sentence of the quoted provision, is any provision for notification to the Commission. Section 252(e)(1) of the 1996 Act provides that "[a]ny interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State Commission." An amendment to the Agreement, whether negotiated or arbitrated, constitutes a "new" agreement that requires Commission approval pursuant to § 252(e)(2) of the Act. Section 27 is discussed and rejected below because it does not provide for notification to the Commission.

B. Dispute Resolution: Part A-Page 27, Section 27

16. Section 27 sets forth the parties' agreement pertaining to resolution of disputes arising under the Agreement. It provides that such disputes may be brought to the Commission through its informal or formal complaint processes or may be referred to negotiation and arbitration under the procedures provided in the Agreement. It includes detailed and extensive arbitration provisions. While the parties are free to provide for dispute resolution in this manner according to the 1996 Act, the resolution arrived at by the arbitrator may not be inconsistent⁴ with federal and state law, including Commission regulations. The Commission concludes that this contract provision should be rejected because it does not provide for notification to the Commission of issues to be arbitrated. Both the public interest and the facilitation of market entry are better served by such notification.

17. The Commission has consistently rejected dispute resolution provisions in interconnection agreements that do not include a provision to notify the Commission of a dispute

⁴ In Order no. 5961f, paragraph 13, the Commission wrote, ". . .the resolution arrived at by the arbitrator may not be consistent with federal and state law, . . ." This was an obvious typo. The word should have been "inconsistent."

to be arbitrated by an arbitrator other than the Commission. The Commission also has ordered parties to file all amendments with the Commission for approval. The parties may amend their agreement to rectify the omission.

C. Bona Fide Request (BFR) Process for Further Unbundling: Part A-Page 62, Section 48.11

18. Section 48.11 reads as follows:

In the event of a dispute under this Section 48, the Parties agree to seek expedited Commission resolution of the dispute, to be completed within twenty (20) days of U S WEST's response denying AT&T's BFR, and in no event more than thirty (30) days after the filing of AT&T's petition. Alternatively, the Parties may mutually agree to resolve any disputes under this section through the dispute resolution process pursuant to Section 27, Part A of this Agreement.

19. The Commission finds that it is conceivable to read Section 48.11 as binding the Commission to resolve a disputed BFR within 20 days of U S WEST's denial of the BFR, within 30 days of AT&T filing a petition with the Commission, or within 30 days of AT&T's initial request to U S WEST. It is also possible that the parties meant to agree to request the Commission to resolve disputed BFRs within the stated time period. The parties cannot agree to bind a third-party to a contract term in their Agreement. Specifically, they cannot contractually bind the Commission to a time frame shorter than the allowed statutory period for resolution of interconnection disputes. See 47 U.S.C. § 252.

20. The Commission rejects Section 48.11 because it appears to bind a third party to a term in their agreement and is thus contrary to law. The Commission does not believe that the parties intended to agree to bind the Commission in that manner, but rather, that they intended to bind themselves to a time frame for filing a request that the Commission resolve the dispute. As written, however, the section does not convey the latter intent. The parties may amend their Agreement to clarify this section. They may also ask for expedited treatment if they request Commission resolution of a dispute.

D. Directory Assistance Service: Part A-Page 75, Section 50.3.9

21. Section 50.3.9 provides:

Where INP is deployed and when a BLV/BLI request for a ported number is directed to a U S WEST operator and the query is not successful (i.e., the request yields an abnormal result), Northwest may request, through the BFR process, that the operator confirm whether the number has been ported and direct the request to the appropriate operator.

22. The "Definitions" section in Part A of the Agreement, at page 8, defines BLV/BLI as follows: "(Busy Line Verify/ Busy Line Interrupt) means an operator call in which the end user inquires as to the busy status of, or requests an interruption of, a telephone call." A BLV/BLI is an immediate work task performed by an operator at the request of an end user. The manner in which this section is drafted seems to state that, in conjunction with the operator's immediate work task of verifying a line is in use or interrupting a conversation, Northwest may request that the operator--through the BFR process--confirm that the number has been ported for purposes of Interim Number Portability (INP) and then direct the request to the right operator. Section 50.2.3.8(c) provides that Northwest "may request Directory Assistance call completion services through the BFR process." By reading the two sections, it appears likely that Section 50.3.9 (which the Commission rejects) anticipates that the BFR process has been completed for the Northwest requests to U S WEST's operators. However, the section is unclear as written and should be clarified.

23. It is unclear how the BLV/BLI action, as defined in the Agreement, could be the subject of the lengthy BFR process and still be responded to by the operator. If the operator is going to confirm that a number has been ported and direct the request to the appropriate operator then the reference to the BFR process should be deleted. If it is the use of ported numbers to provide Interim Number Portability (INP) that is causing BLV/BLI requests to yield abnormal results, then the reference to the BFR process should refer to identifying ported numbers. The parties may amend their Agreement to include a clarified version of Section 50.2.3.9.

E. Collocation Rates and Charges: Attachment 1, Schedule 1

24. Schedule 1 provides a listing of the interim rates for interconnection, unbundled network elements, ancillary services and reciprocal compensation. On the last page⁵ of Schedule 1, the parties have included footnotes that impact the rates and charges to be assessed under Schedule 1. U S WEST and Northwest did not include a key footnote that impacts the rates and charges to be assessed Northwest. The Commission determined in Order No. 5961b that rates and charges for physical and virtual collocation should be subject to a true-up after the Commission completes a costing/pricing investigation. This is not reflected in the footnotes.

25. The Commission determined interim rates and charges for physical and virtual collocation and stated as follows:

Collocation Rates--AT&T did not perform any cost studies to determine collocation prices in this proceeding, but instead recommended the Commission adopt the physical collocation prices proposed by the Oregon PUC staff in an Oregon PUC proceeding, and the virtual collocation prices ordered by the Oregon PUC in the same proceeding. U S WEST has proposed its own collocation prices that it explains were developed in compliance with the FCC's TELRIC pricing rules. U S WEST also provided a comparison of interstate collocation prices of seven local exchange companies, on an aggregate, per DS1 price basis. The comparison indicated that U S WEST's price proposals was (sic) reasonable.

The Commission adopts U S WEST's proposed collocation prices, for interim purposes, until it conducts an investigation of collocation costing/pricing practices and policies. The Commission finds that these interim prices shall be subject to a true-up once permanent rates are determined.

Order No. 5961b, Docket No. D96.11.200, p. 87 (Emphasis added).

26. The Commission affirmed its collocation pricing decision in Order No. 5961c, at ¶ 145, stating as follows:

⁵ Schedule 1 is not numbered, so a more precise reference cannot be made. The Commission also notes that the Tables of Contents for Part A, Attachment 1 and for Attachment 2 are incorrectly numbered.

Moreover, AT&T admits it has not developed collocation rates for U S WEST specific to Montana, and instead relies on rates from an Oregon proceeding. It also makes no claims that its proposed rates are based on acceptable TELRIC analysis. U S WEST, on the other hand, has proposed rates in this case and has provided some supporting documentation for its proposals. AT&T did not adequately demonstrate that U S WEST's rates are not suitable for interim purposes. In addition, as explained in the Arbitration Order, the Commission has committed to opening a collocation costing/pricing docket. The Commission appropriately concluded that any collocation rates paid by AT&T to U S WEST will be subject to a true-up once permanent rates are determined in that docket. (Emphasis added.)

27. Section 252 of the 1996 Act clearly authorizes the Commission to determine just and reasonable rates for interconnection of facilities. The Commission has made a specific pricing determination regarding collocation rates and charges. We conclude that our decisions in our orders addressing the U S West/AT&T agreement, requiring a true-up of collocation rates, must be included in this Agreement and is not subject to negotiation by the parties. The parties will be directed to amend this section to so comply.

F. Resale Discount Variations: Attachment 2-Page 2, Section 1.3

28. Section 1.3 provides:

At the request of Northwest, and pursuant to the requirements of the Act, and FCC rules and state regulations, U S WEST shall make available to Northwest for resale any Telecommunications Services that U S WEST currently provides or may offer hereafter. Resale discounts may vary from the standard resale discount, subject to the approval of the Commission. U S WEST shall also provide Service Functions, as agreed to in this Attachment 2. The Telecommunications Services and Service Functions provided by U S WEST to Northwest pursuant to this Attachment 2 are collectively referred to as "Local Resale". (Emphasis added).

29. The underlined sentence is inconsistent with Order No. 5961b, Docket No. D96.11.200, at pages 48-49 with respect to U S WEST's currently provided services. Order No. 5961b determined that the resale discount for currently provided services should be 18.1%. The order provided for no deviations from that discount for current U S WEST services. The

Commission reaffirmed the resale discount rate in Order 5961c, Docket No. D96.11.200, at pages 29-31. Although we do not reject Section 1.3 in Attachment 2, we conclude that the interim resale discount should remain in place and be applicable to all currently provided U S WEST services until the Commission has completed the "omnibus" pricing proceeding to establish permanent rates.

G. Resale: Attachment 2-Page 3, Section 2.1 and 2.2; and page 11, Sections 9.1 and 9.2

30. Attachment 2 includes the following terms:

2. General Terms and Conditions for Resale

2.1 Primary Local Exchange Carrier Selection. U S WEST shall apply the principles set forth in Section 64.1100 of the FCC Rules, 47 C.F.R. § 64.1100, as implemented, to the process for end-user selection of a primary local exchange carrier. In accordance with the customer authorization process described elsewhere in this Agreement, U S WEST shall not require notification from the customer, another carrier, or another entity, in order to process an AT&T order for local service for a customer.

9. Customer Authorization Process

9.1 U S WEST and AT&T will use the existing PIC process as a model, and the same or similar procedures for changes of local providers. For a local carrier change initiated by AT&T or an agent of AT&T to a customer, one of the following four (4) procedures will constitute authorization for the change: (a) Obtain the customer's written authorization (letter of authorization or LOA); (b) Obtain the customer's electronic authorization by use of an (sic) toll-free number; (c) Have the customer's oral authorization verified by an independent third party (third party verification); or (d) Send an information package, including a prepaid, returnable postcard, within three (3) days of the customer's request for a local carrier change, and wait fourteen (14) days before submitting the local carrier change to the previous carrier.

9.2 It is understood by U S WEST and AT&T that these procedures may be superseded or modified by FCC rules or industry standards.

31. Consistent with prior decisions in interconnection agreement approvals, the Commission rejects these sections of the Agreement because they are not consistent with Montana law. See § 69-3-1303, MCA, and ARM 38.5.3801 and ARM 38.5.3802.

32. The last sentence of section 2.2 of Attachment 2 reads: "Nothing in this Agreement shall be deemed to prohibit either Party from discussing its products and services with customers of the other Party who solicit such information or who are directly contacted by a Party." Similar language exists in other agreements and has not been rejected by the Commission. However, the Commission has noted that this language may be in conflict with ARM 38.5.4116, especially ARM 38.5.4116(1)(c). The Commission reiterates that "[Northwest] and U S West . . . can agree that nothing in their Agreement prohibits certain conduct, but if that conduct otherwise violates the law, the provision in the Agreement that sanctions such conduct is void. §§ 28-2-604, 28-2-701, 28-2-702, MCA. Any provision or term of this Agreement that is in conflict with the law, whether or not specifically addressed by the Commission, is rejected as a matter of law and not in the public interest." Order No. 6175, Docket No. D99.3.68, p.5.

H. Unbundled Access/Elements: Attachment 3-Page 5, Section 3.3

33. Section 3.3 provides:

Unless otherwise requested by Northwest, each Network Element and the connections between Network Elements provided by U S WEST to Northwest shall be made available to Northwest at any technically feasible point, that is equal to or better than the manner in which U S WEST provides such Network Elements, and connections to itself, its own subscribers, to a U S WEST Affiliate or to any other Person.

34. In this section, U S WEST offers to provide service to Northwest that is equal to or better than the service it provides itself or others. If U S WEST provides service to Northwest that is better than the service it provides to other CLECs, it may violate § 251(c)(2)(C) of the Act. Section 252(c)(2)(C) provides that a LEC has the duty to provide interconnection that is at least equal in quality to that provided by the LEC to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection. If the phrase "or to any other Person" is stricken from the provision, or if the provision quotes the statute exactly, Section 3.3 would be

acceptable to the Commission. The term is rejected, but the parties may amend the Agreement to include a revised term.

I. Unbundled Access/Elements: Attachment 3-Page 3, Section 1.2.3

35. Section 1.2.3 provides:

If [Northwest] provides a service that replicates a retail service provided by U S WEST, and if it provides that service solely by combining U S WEST's Network Elements, without providing any of the elements itself and without using [Northwest's] own Loop or switching functionality to produce the service, [Northwest's] compensation to U S WEST shall be equal to U S WEST's wholesale rate for that service. If [Northwest] purchases U S WEST's Network Elements to provide a service that replicates a U S WEST retail service, and only provides Operator Services and Directory Assistance, [Northwest] shall still pay the wholesale price associated with U S WEST's retail service.

36. In Order 5961e, Docket No. D96.11.200, at page 5, the Commission stated:

11. The Commission recognizes that the Act allows CLECs to obtain UNEs at cost-based rates. This statutory requirement squares with the Eighth Circuit's opinions which apply to circumstances where the ILEC permits CLECs a means to access their network to combine elements. However, we cannot agree that a CLEC should be able to obtain combined elements at cost-based rates. In these circumstances, the CLEC will avoid all costs of combining elements if the ILEC is precluded from imposing an additional charge. The Eighth Circuit did not foresee the situation we are confronted with here; in this instance, we concluded that the Court's orders preclude AT&T from obtaining UNEs at cost-based rates where AT&T is not combining elements itself. We further concluded that the unbundling charge ensures that AT&T will not acquire UNEs at cost-based rates. We added, "Requiring U S WEST to provide UNE combinations only if paid a rebundling charge by the CLEC is not inconsistent with the Eighth Circuit's opinion."

12. The Commission's last order does not require that this situation continue indefinitely. Rather, it encourages the parties to resolve the network access problem. The Commission has also stated that it will open a proceeding to address permanent rates; the rebundling charge can also be addressed in that proceeding if there is a need for it to continue.

37. The Commission rejects Section 1.2.3 because it is not consistent with the Commission's orders and the parties clearly intend it to be as noted in footnote 4 on page 3 of

Attachment 3. The parties will be directed to redraft this section to recognize the above findings. Further, the Agreement should reflect that Northwest will not pay the rebundling charge when it combines elements.

J. Creditworthiness Database: Attachment 5-Page 4, Section 2.1.3

38. Section 2.1.3 provides that both Northwest and U S WEST will make available certain customer payment history information-for each person or entity that applies for local service or intraLATA toll services from either carrier-to a mutually agreed upon third-party credit reporting agency. The information to be reported includes the applicant's name, address and previous telephone number, if any; the amount of any unpaid balance in the applicant's name; whether the applicant is delinquent on payments; the length of service with the prior local or intraLATA toll provider; whether the applicant had local or intraLATA toll service terminated or suspended within the last six months (including an explanation of the reason therefor); and whether the applicant was required by the prior local or intraLATA toll provider to pay a deposit or make an advance payment, or provide another form of security (including the amount of each). This section would permit customer credit information to be reported to a credit reporting agency without the customer's authorization and should be rejected.

39. If the database is used for determining whether a deposit should be required of the applicant, it is not consistent with Commission rules. It includes information that is pertinent to some of the Commission's deposit rules, but not to all of them. In rejecting a provision intended for this purpose in some resale agreements previously reviewed by the Commission, we expressed our concerns for customer privacy and increased opportunity for anticompetitive conduct. Although the rejected language was much different,⁶ this provision raises similar concerns for customer privacy.

⁶ The term in those agreements provided: "The parties agree that they will not transfer their respective end user customers whose accounts are in arrears between each other. The parties further agree that they work cooperatively together to develop the standards and processes applicable to the transfer of such accounts." *See, e.g., In the Matter of the Applications of Citizens Telecommunications Company and Montana Communications, Docket Nos. D96.11.191 and D96.11.198, Order No. 5962a (Feb. 10, 1997).*

40. Further, it establishes a means for Northwest and U S WEST – but no other telecommunications provider-to obtain useful information about potential customers. Such a database, if implemented, should be available to all telecommunications carriers and should be established by a proceeding which includes industry participants, consumer representatives and other interested parties.

41. The Commission rejects this section because it is not consistent with Commission regulations, it is otherwise not consistent with the public interest, and it discriminates against carriers who are not parties to the Agreement.

K. Termination for Non-Payment of Charges

42. Conspicuously missing from this Agreement is any contract term providing for termination of service to Northwest if Northwest fails to pay U S WEST. U S WEST has negotiated detailed "Payment" provisions in numerous resale agreements presented to the Commission for approval. The Commission has consistently rejected these provisions because they provided no notification to the Commission prior to termination of services, and failure to pay according to the terms could place end user customers' services in jeopardy of being disconnected through no fault on their part.

43. The Commission concludes that notification to the Commission of a pending disconnection of services to an indeterminable number of end users is critical. If notified of a pending termination of service to customers, the Commission can act appropriately to protect their interests. It is also important that the Commission be notified if U S WEST refuses to process any further service orders from a reseller. Therefore, despite the omission of payment terms in the Agreement, the Commission will require that U S WEST notify the Commission if it takes any such action with respect to Northwest or any other CLEC who later adopts this Agreement.

L. Leased Collocation Space

44. Section 40.3.4, Part A, of the Agreement reads, in part, "[Northwest] must use leased space as soon as reasonably possible and may not warehouse space for later use or sublease to another provider." The Commission has indicated in previous orders that prohibiting

the subleasing of collocation space "has the potential to discriminate against a carrier not a party to the Agreement by preventing a possible mechanism for acquiring scarce collocation space." Order No. 6209, Docket No. D99.8.195, In the Matter of the Application of DSLnet Communications, LLC and U S WEST Communications, Inc., p. 5. The Commission finds once again that such a prohibition is not in the public interest.

III. Conclusions of Law

1. The Commission has authority to supervise, regulate and control public utilities. Section 69-3-102, MCA. U S WEST and Northwest are public utilities 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 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.
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.
5. The Commission has jurisdiction to approve the Northwest/U S WEST interconnection agreement submitted to the Commission for approval pursuant to § 252(e)(2) of the 1996 Act. Section 69-3-103, 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 and to any requirements of Montana law that are not inconsistent with the 1996 Act. Section 252(e) limits Commission review of an arbitrated agreement to the standards set forth therein for rejection of such agreements. Section 252(e)(4) requires the Commission to approve or reject the parties' arbitrated agreement by August 7, 1998, or it will be deemed approved.

IV. Order

THEREFORE, based upon the foregoing, it is ORDERED that the interconnection agreement between U S WEST Communications, Inc. and Northwest Communications Networks, Inc., submitted to this Commission for approval pursuant to the Telecommunications Act of 1996, is APPROVED subject to the exceptions discussed herein and subject to the following conditions:

1. The parties may file amendments to the Agreement consistent with certain of the Commission's decisions in this proceeding.
2. The parties shall amend the Agreement to include the Commission's directive that any collocation rates paid by Northwest to U S WEST will be subject to a true-up once permanent rates are determined in a separate proceeding to be initiated by the Commission and to reflect the Commission's orders for combination of unbundled elements.
3. The parties shall file all subsequent amendments to the Agreement with the Commission for approval pursuant to the 1996 Act, including any provisions that are developed pursuant to the parties' statements in this Agreement.
4. The parties shall notify the Commission if they hire an arbitrator that is not the Commission to decide disputed issues and shall describe the issues the arbitrator will resolve.
5. U S WEST shall concurrently notify the Commission if it notifies Northwest that it intends to terminate for nonpayment any telecommunications services that may affect Northwest's end user customers, or that it intends to stop further service order activity requested by Northwest.

DONE AND DATED this 13th of December, 1999, by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chairman

NANCY MCCAFFREE, Vice Chair

GARY FELAND, Commissioner

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.