

Service Date: March 3, 1999

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

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IN THE MATTER OF)	UTILITY DIVISION
US WEST Communications, Inc.)	
Application for Competitive Zone Pricing)	DOCKET NO. N98.10.241
in the Sidney and Fairview Exchanges.)	ORDER NO. 6151

NOTICE OF COMMISSION ACTION AND ORDER

1. PLEASE TAKE NOTICE that the Montana Public Service Commission (Commission), in a scheduled work session held on February 11, 1999, approved U S WEST Communications, Inc.'s (U S WEST) Tariff Transmittal 98-45. U S WEST's application, filed on October 8, 1998, proposed to add the Sidney and Fairview exchanges to the Competitive Zone Pricing portion of Section 5, Exchange and Network Services tariff.

2. The filing was noticed on a regularly scheduled weekly Commission agenda. On October 21, 1998, Mid-Rivers Telephone Cooperative, Inc. (Mid-Rivers) filed objections to the approval of the tariff. Mid-Rivers commented that it currently serves only a limited number of access lines in the Sidney exchange and that it will not offer services in the Fairview exchange until at least mid-1999. Mid-Rivers asserted that such competition does not satisfy the criteria established by the Commission in In the Matter of the Application of U S WEST Communications, Inc. for Authority to Flexibly Price Regulated Telecommunications Services in Certain Local Exchanges, Docket D97.7.125, Order No. 5998d, the initial flexible pricing application filed by U S WEST. Mid-Rivers further asserted that U S WEST has failed to satisfy the legal requirements for flexible pricing authority set forth in § 69-3-807, MCA.

3. U S WEST responded, stating that Mid-Rivers has "already taken U S WEST's customers in the Sidney exchange and is bargaining for customers in the Fairview exchange." According to U S WEST, Mid-Rivers contacts customers before it is physically capable of providing service and signs up customers on the basis of a future in-service date. U S WEST argues that either "offering" or "providing" service is sufficient to establish the conditions for

competitive zone pricing. U S WEST also claims that Mid-Rivers has no standing to object to the filing because it has no legally recognizable interest in preventing the authorization of flexible pricing for U S WEST's customers.

4. The Commission concludes that it is in the public interest to approve U S WEST's application to add Sidney and Fairview as flexible pricing exchanges. However, sufficient questions have arisen in this Docket to indicate the need to revisit the flexible pricing issues. Although the Commission approves the application for Sidney and Fairview, the overall impact of pricing flexibility by the dominant local exchange carrier needs further exploration in a proceeding where substantial commentary may be requested from numerous interested parties. The Commission will initiate an investigation to determine how to proceed with regard to addressing in detail competitive pricing issues and public interest policy.

CONCLUSIONS OF LAW

1. The Commission has the 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 Montana. Section 69-3-101, MCA.

2. The Commission has the 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. 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.

4. The Commission may authorize the provision of regulated telecommunications service under terms and conditions that best serve the policy of the state of Montana. Section 69-3-807(2), MCA. The Commission may authorize permissible price ranges pursuant to § 69-3-807(2)(c), MCA, except noncompetitive local exchange access to end users and carrier access, if the resulting minimum rates are cost compensatory. The Commission may approve such price ranges without considering the factors set forth in § 69-3-807(3), MCA, if it finds the action consistent with § 69-3-802, MCA, and with the public interest.

ORDER

THEREFORE, based on the foregoing, IT IS ORDERED that U S WEST's application for pricing flexibility in its Sidney and Fairview exchanges is APPROVED.

DONE AND DATED this 11th day of February 1999, by a vote of 3 to 2.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chairman

NANCY MCCAFFREE, Vice Chair
Dissenting

BOB ANDERSON, Commissioner

GARY FELAND, Commissioner

BOB ROWE, Commissioner, Dissenting
Dissent Attached.

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.

DISSENT OF COMMISSIONER ROWE

I dissent from the Commission's decision to grant U S WEST flexible pricing for both Fairview and Sidney.

There is no showing of actual competition for Fairview. The standard for reviewing these applications set out by the Commission in Docket 97.7.125, concerning flexible pricing in Terry and Glendive, is clearly not met.

As to Sidney the record is less clear, and should be resolved before approving the application. Mid-Rivers, the competitor, raised specific questions which have not been answered. Among other matters, Mid-Rivers claims it will not physically be able to serve the core of the exchange until-mid 1999. In any event, both the actual number and percentage of customers it is serving are extremely small. The issues raised should have been resolved before approving the application for Sidney.

I strongly support the Commission's decision to consider opening a docket to develop general policies for retail pricing flexibility, and to consider the relationship between that docket and other telecommunications work. The initial record in Docket 97.7.125 provides a good starting point for that effort. We have also learned a great deal as we have reviewed individual applications.

As we consider flexible pricing proposals, I encourage the parties to ground their comments in the context of retail pricing and competition policy generally. Specifically, I am interested in discussion of various regulatory "matrices" which would propose an orderly removal of various levels of retail pricing regulation as competition advances. Various versions of this approach have been proposed at different times by both interexchange carriers and local carriers. I hope parties will also use this as an opportunity to further develop their views on symmetric or asymmetric regulation of market-dominant retail carriers.

Respectfully submitted,

BOB ROWE, Commissioner