DECISION MEMORANDUM

TO:COMMISSIONER NELSON

COMMISSIONER SMITH

COMMISSIONER HANSEN

MYRNA WALTERS

TONYA CLARK

DON HOWELL

STEPHANIE MILLER

DAVE SCHUNKE

JOE CUSICK

BILL EASTLAKE

DAVID SCOTT

WORKING FILE

FROM:SUSAN HAMLIN

DATE:FEBRUARY 7, 1997

RE:CASE NO. USW-T-96-16

APPLICATION OF U S WEST COMMUNICATIONS INC. FOR APPROVAL OF AN AGREE­MENT FOR RESALE PURSUANT TO 47 U.S.C. § 252(e).

On December 19, 1996, U S WESTCommunications, Inc. (U S WEST) filed an Application for approval of an agreement for resale services.  The agreement provides for Montana Communications (MC) to resell U S WEST local exchange service in Idaho and other states.  The Application indicated that this agreement was reached through voluntary negotiations and is submitted to the Commission for approval pursuant to §252(e) of the Telecommunications Act.

Section 252(e) of the Act sets the guidelines for approval of interconnection agreements.  It states:

(e)APPROVAL BY STATE COMMISSION.—

(1)APPROVAL REQUIRED.—Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission.  A State Commission to which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies.

(2)GROUNDS FOR REJECTION.—The State commission may only reject—

(A)an agreement (or any portion thereof) adopted by negotiation under subsection (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;

U S WEST asks for approval of this agreement and claims that because this agreement was reached through voluntary negotiations a hearing is not necessary.

Staff’s Recommendation:

 MC is not an existing telecommunications provider in Idaho, nor has it filed for a Certificate of Public Convenience & Necessity to provide local service.  Staff has questioned whether it is necessary for an applicant to have the Certificate before an interconnection agreement may be processed.  Due to the time line set in the 1996 Act, the Commission must act on the agreement within 90 days or the agreement is deemed approved.  Section 252(e)(4).(footnote: 1)  Given the urgency and the deadlines contained in the federal Act, Staff believes that it is not necessary for all parties to an interconnection agreement to possess a Certificate at the time the interconnection agreement is submitted for review.  Consequently, Staff recommends that this matter be set for Modified Procedure on a shortened 14-day comment period.  Staff also believes it is appropriate to include in the Notice that any approval of this agreement does not constitute authorization nor approval that MC has authority to operate as a telecommunications provider.  MC must still apply and receive a Certificate of Public Convenience & Necessity pursuant to the rules and laws in Idaho.(footnote: 2)

Commission Decision:

A.  Does the Commission wish to set this matter for Modified Procedure with 14 day time period?

B.  Does the Commission have another suggestion?

Susan Hamlin

cm/M:uswt9615.sh

**FOOTNOTES**

1:

Section 252(e)(5) also provides that the FCC may preempt state commission jurisdiction “if a state commission fails to carry out its responsibility under this section.”

2:

  The Saving Clause of Section 242(e)(3) provides that States may establish or enforce requirements of State law in its review of an agreement, such as the requirement to obtain a Certificate.