

Service Date: September 2, 1999

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

* * * * *

IN THE MATTER of the Commission's)	UTILITY
DIVISION		
Inquiry Into Payphone Issues Arising Out of)	
the Telecommunications Act of 1996 and)	DOCKET N
O. D97.2.33		
Subsequent Federal Communications)	
ORDER NO. 6050a		
Commission Orders To Implement the Payphone)	
Provisions of the Act)	

IN THE MATTER of MCI's and AT&T's Petition)	UTILITY
DIVISION		
Regarding Local Exchange Carriers' Compliance)	
With FCC Payphone Orders)	
DOCKET NO. D97.4.65		
)	
ORDER NO. 6051a		

FINAL ORDER

FINDINGS OF FACT AND DISCUSSION

Introduction

1. Docket No. D97.2.33 was initiated by the Public Service Commission (PSC or Commission) through a Notice of Inquiry issued March 21, 1997. The purpose of the inquiry was to obtain information on actions needed to implement pay telephone (payphone) provisions of the then-recent federal Telecommunications Act of 1996 and Federal Communications Commission (FCC) orders implementing that Act. Prior to the PSC notice several Montana telecommunications carriers had filed proposals for revision to their intrastate payphone tariffs in response to FCC payphone orders. After the PSC notice several a

Additional carriers made similar filings. The carriers' proposals have since been incorporated into Docket No. D97.2.33.

2. Docket No. D97.4.65 is a related investigation (i.e., investigation of Montana local exchange carrier compliance with FCC payphone orders) initiated by request of MCI Telecommunications Corporation (MCI) and AT&T Communications, Inc. (AT&T). Docket No. D97.4.65 has been joined with Docket No. D97.2.33 for case management purposes.

3. Following several preliminary procedures in the dockets, including consideration of comments and information received and consolidation of the matters involved, on February 26, 1998, the PSC issued a proposed order (Order No. 6050, D97.2.33, and Order No. 6051, D97.4.65) proposing a resolution of all issues present in the dockets and inviting comments by the parties involved. U S West Communications, Inc. (USWC) filed objections to the proposed order. Northwest Payphone Association (NPA) filed a response to USWC's objections.

4. Final action on the proposed order was deferred pending final action in a USWC rate rebalancing proceeding (see below) which also involved payphone issues. In this final order the proposed order is modified, including to reflect consideration of comments received on the proposed order and the Commission's decisions in Matter of USWC, Restructuring of Prices (rate rebalancing), PSC Docket No. D96.12.220, Order No. 5965c (August 26, 1998), and Commission orders resulting from the settlement of judicial review of that proceeding, Order No. 5965d (January 20, 1999) and Order No. 5965e (March 2, 1999). The Commission's orders in D96.12.220 dispose of all payphone-related issues pertaining to USWC and this final order does not affect USWC.

5. Under § 276 of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (the "1996 Act"), Congress mandated the restructuring of the payphone industry. To implement this directive, the FCC adopted what hav

e become known as the FCC payphone orders (i.e., Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, C C 96-128, Report and Order, FCC 96-388, 61 Fed. Reg. 52307 (rel. Sept. 20, 1996); Order on Reconsideration, FCC 96-439, 61 Fed. Reg. 65341 (rel. Nov. 8, 1996); Order, DA 97-678, 62 Fed. Reg. 24585 (rel. Apr. 4, 1997); and Order, DA 97-805, 62 Fed. Reg. 24583 (rel. Apr. 15, 1997)).

6. In response to the FCC payphone orders, the PSC has received filings from numerous local exchange carriers (LECs) requesting approval of various payphone-related tariff revisions to their local exchange tariffs. Central Montana Communications, Inc. (Central), PTI Communications (PTI, now CenturyTel), Citizens Telecommunications Company of Montana (Citizens), Project Telephone Company (Project), Valley Telecommunications, Inc. (Valley), Ronan Telephone Company (Ronan), and Hot Springs Telephone Company (Hot Springs) have filed proposed revisions to their intrastate payphone tariffs. USWC also filed proposed revisions to its tariffs (initially docketed as N97.5.86) which have been resolved in USWC's rate rebalancing filing (see discussion above). The Commission has established new tariffs for USWC public access lines (PAL) in that proceeding. Accordingly, this final order does not address USWC PAL services.

7. On February 26, 1997, NPA filed a petition to suspend approval of all of the above payphone-related tariff filings, establish a single, consolidated docket for these filings, and accept comments on the filings. As indicated above the Commission consolidated the matters into Docket D97.2.33 for the purpose of investigating the actions needed to implement ? 276 of the 1996 Act and the FCC payphone orders, and also to consider possible amendments to PSC administrative rules governing the regulation of payphone service. The Commission solicited comments on payphone cost-related issues as well as non-cost rel

ated issues. The cost-related issues are addressed first in this Order.

LEC Tariff Filings

8. In its filing (N96.12.214), Central originally proposed to withdraw its private payphone provisions from its tariff entirely and grandfather existing customers. Central later revised its filing to add a new payphone provider section to its tariff. Central's charge for a payphone access line is the same as its Business 1-party Access Line rate--\$35.81 per month.

Central also offers coin supervision for \$2.21 per month with a non-recurring charge of \$10.00.

Central's filing did not include any cost information. The Commission approved Central's revised tariff filing in part on an interim basis on July 7, 1997, pending conclusion of this Docket.

9. In its filing (N97.1.7), PTI proposed to withdraw the public and semipublic payphone sections from its tariff, revise the name of the "public access line" section to "payphone services," unbundle the charges for payphone services to allow providers to use central office coin line services for "dumb" payphones, and provide fraud protection to payphone customers. PTI's charge for a payphone access line is the same as its Business Valleywide service--\$35.60 per month. PTI also offers Central Office Payphone Supervision at \$2.75 per month and Fraud Protection with a non-recurring charge of \$10.00. PTI's filing included cost information. The Commission approved PTI's tariff filing in part on an interim basis on March 4, 1997, pending conclusion of this Docket.

10. In its filing (N97.1.9), Citizens proposed to remove all rates, terms and conditions for semipublic payphone service and to introduce "Coin Supervision/Transmission Service" which would allow payphone providers who use "dumb" payphones to have the same central office transmission functionalities that Citizens provides to its own payphone service. Citizens also filed rates, terms and conditions, definitions, and index references pertaining to Public Telephone

Service. Citizens' charge for its payphone access lines is the same as its business rate--\$35.78 per month. Citizens also offers screening for \$2.45 per month and a non-recurring charge of \$39.02, and coin supervision for \$2.70 per month. Citizens provided cost information with its filing. The Commission approved Citizen's tariff filing in part on an interim basis on March 4, 1997, pending conclusion of this Docket.

1. Valley and Project submitted identical filings (N97.6.98 and N97.6.99 respectively) in which the companies proposed to rename and revise the "Paystation Service" and the "Customer Owned Coin-Operated Telephone Service" (COCOT) sections of their tariffs. The Paystation Service section is renamed "Semi Public Paystation Service" and provides rates, terms and conditions for semipublic payphone service. The COCOT section is renamed "Payphone Provider Service" and provides rates, terms and conditions of access lines and ancillary services applicable for the use of customer-provided, coin operated or coinless telephones. The companies propose to charge the same rate for customer-provided payphone access lines as they charge for a regular business line--\$35.81 per month. The companies also proposed to offer coin supervision for \$2.21 per month. The companies provided no cost information. The Commission approved Valley and Project's proposed tariff rates in part on an interim basis pending conclusion of this Docket.

1. In its filing (N97.5.86), Ronan proposed to grandfather its Semi-Public Telephone Service as of June 10, 1997. Ronan also proposed to revise its "Local Public Access Line Service" tariff. Ronan proposed to offer separate "Dumb" and "Smart" PAL services. The proposed Dumb PAL rate is \$25.50 per month -- 1.5 times Ronan's monthly one-party business rate. The proposed Smart PAL rate is \$45 per month. "Central Office Automatic Number Identification" (ANI) and "Coin Supervision" are provided with Smart PAL service at no additional charge. Ronan offers two types of fraud protection,

"Billed Number Screening" and "Prefix Blocking," which are available with either type of PAL service for one-time non-recurring charges of \$5 for billed number screening and \$10 for the first blocked prefix and \$5 for additional blocked prefixes. Ronan filed no cost information. The Commission approved Ronan's proposed tariff rates on an interim basis on June 10, 1997, pending conclusion of this Docket.

1. In its filing (N97.6.107), Hot Springs proposed to revise its PAL service to offer both Dumb and Smart PAL lines. The rates for Dumb PAL service is the same as the one-party business rate, while the rate for Smart PAL service is \$50.00 per month. "Central Office ANI" and "Coin Supervision" are provided with Smart PAL service at no additional charge. "Billed Number Screening" is available with either Smart or Dumb PAL service for a \$5.00 non-recurring charge. Hot Springs did not file cost information. The Commission approved Hot Springs' tariff rates in part on an interim basis pending conclusion of this Docket.

NPA

14. In its petition and motion to suspend, NPA argued that the PAL line is no different from a business line and should be priced no higher than the flat usage business rate. NPA also argued that fraud protection measures and answer supervision should be priced commensurate with cost and that answer supervision should be unbundled from the basic PAL line. NPA also requested that these services be provided at parity to the services provided by LECs to themselves and that the terms and conditions in payphone tariffs should reflect those generally applicable to all access lines and should be competitively neutral.

15. In its response to the proposed order NPA suggested that the Commission should require each LEC to provide full documentation for PAL rates, including: (1) a cost study containing a projection of costs for a representative 12-month period; (2) estimates of the effect of any new service on the traffic and revenues, including the tr

affic and revenues of other services;
and (3) supporting working papers for estimates of costs, traffic, and revenues.

Decision on LEC Filings

16. The FCC noted in Order No. 96-388 that coin services must be made available by the LEC or its affiliate to other payphone providers on a comparable basis in order to ensure that other payphone providers do not receive discriminatory service from LECs once LEC payphones are deregulated, and to ensure that other payphone providers can compete with LEC payphone operations. The FCC payphone orders require basic network services or unbundled features used by a LEC's payphone operations to provide payphone services must be similarly available to payphone service providers (PSPs) on a nondiscriminatory, tariffed basis, and must be tariffed in both state and federal jurisdictions. Order on Reconsideration, at 162. The FCC does not require, however, that tariffs be filed with the FCC for the basic payphone line. Id., at 163.

1. The FCC orders require charges for payphone services to be unbundled to allow providers to use central office coin line services for "dumb" payphones. The tariffed prices for these unbundled features must be cost-based, nondiscriminatory, consistent with the requirements of 47 U.S.C. § 276, and they must meet the requirements of the FCC's "new services test" (Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, CC Docket No. 89-79, Report and Order & Order on Further Reconsideration & Supplemental Notice of Proposed Rulemaking, 6 F.C.C.R. 4524 (1991) ("ONA Order"); CC Docket Nos. 89-79 and 87-313, Memorandum Opinion & Order on Second Reconsideration, 7 F.C.C.R. 5285 (1992) ("ONA Reconsideration Order"), Memorandum Opinion & Order on Third Reconsideration, 10 F.C.C.R. 1570 (1994)). Services such as fraud protection, which are not payphone-specific services, are not subject to the new services test.

18. The Commission has addressed USWC's pricing of public access line offerings in Docket No. D96.12.220. In that Docket, NPA had urged the Commission to adopt PAL rates that mirrored USWC's business rates. The Commission did not adopt PAL rates mirroring USWC's business rates. For example, the Commission's final order in that case approved USWC's proposed raise in the monthly recurring charge for Smart PAL from \$22.57 to \$29.60. See Matter of USWC, Restructuring of Prices, Docket No. D96.12.220, Order No. 5965c (Aug. 26, 1998).

19. NPA appealed the Commission's decision in Order No. 5965c. *NPA v. Montana Department of Public Service Regulation, et al.*, Cause No. BDV 98-559. As a result of judicial review, NPA and USWC executed an agreement in settlement of the issues appealed by NPA involving PAL rates. NPA and USWC agreed to seek and obtain dismissal of the appeal following Commission approval of the settlement agreement and tariff pages filed according to its terms. The Commission approved the settlement agreement on an interim basis in Order No. 5965d. After public notice and an opportunity to be heard on the settlement, the Commission adopted the interim order as the final order in Order No. 5965e.

The PAL tariffs approved by the Commission as a result of those orders are in no way affected by this final order. Those tariffs fully comply with the general principles enunciated in this final order.

1. The Commission concludes that the filings of Central, PTI, Citizens, Project, Valley, Ronan, and Hot Springs should be approved subject to applicable changes required by this Order. The Commission further concludes that other LECs offering smart PAL service should charge no more than USWC's Smart PAL service unless the LEC files sufficient information showing the proposed rate meets the FCC's "new services test."

Decision on Costing

21. The primary issue or concern is ensuring that LEC payph

one-related services such as "smart" and "dumb" PAL lines are available to PSPs on an unbundled basis, and at reasonable and non-discriminatory rates, terms, and conditions. The Commission concludes that it is reasonable to require LECs to revise their PAL tariffs as necessary so that the rates for "dumb" PAL lines are identical to the LECs' flat monthly business rates. LECs who wish to charge a "dumb" PAL rate that is greater than its monthly business rate must submit to the PSC sufficient information pursuant to the FCC's "new services test" to justify the LEC's proposed "dumb" PAL rate. LECs that offer measured rate or message rate business lines must also offer measured rate or message rate "dumb" PAL line service. LECs that offer "dumb" PAL line service shall charge no more than the business line rates unless the LEC files sufficient information showing the proposed rate meets the FCC's "new services test."

22. Finally, LECs must offer--on a non-discriminatory basis--payphone-related services with the same functionality as the services used for the LECs' own payphone operations. There also may be other services that are exclusively payphone services that should be unbundled pursuant to the FCC's payphone orders. The Commission will address these services as necessary when brought to its attention in the future.

23. In the proposed order in this docket the Commission stated that "the rates that have been approved on an interim basis for "smart" PAL line service and for ancillary payphone-related services may continue on a permanent basis." Permanent rates for USWC were established in Docket No. D96.12.220, Order No. 5965e. Other LECs whose rates are inconsistent with this final order and Order No. 5965e will be required to file compliance tariffs to reflect these orders or to file supporting information to satisfy the FCC's new services test.

Docket D97.4.65 - AT&T / MCI

1. On April 14, 1997, MCI and AT&T requested that the Commission certify to the

FCC whether each Montana LEC has complied with the FCC's payphone orders by removing from their intrastate operations their deregulated payphone investments and expenses and reducing their intrastate revenue requirements and rates to reflect the adjustments. AT&T and MCI asked that the Commission suspend or deny any LEC payphone tariffs until the Commission determined that all intrastate rates, including access charges, have been reduced to reflect the elimination of payphone investment and expenses.

25. USWC responded that it had performed an analysis for each state which showed that payphone revenues exceed payphone expenses. In addition, USWC stated that only three states in which it operates (Oregon, Washington, and South Dakota) had access charge rates that were established by rules similar to FCC access charge rules (which were designed to support payphone operations). According to USWC, the FCC is not requiring any action from state commissions regarding the subsidy issue, other than approving tariff revisions in cases where intrastate subsidies exist and need to be removed. Finally, USWC stated it believes it has met the requirements of the FCC Payphone Orders. The same issue was addressed in the PSC's Notice of Inquiry in which the Commission asked for comments regarding what intrastate rate elements that recover the costs of payphones should be removed from incumbent LECs' intrastate rates. PTI said it made no access charge adjustments to reflect the removal of payphone equipment costs in Montana because the Commission has not adopted provisions similar to the FCC Part 69 rules for establishment of intrastate access charges and, therefore, there is no basis to remove any Montana intrastate rate elements or to otherwise adjust intrastate rates as a result of payphone deregulation. Citizens said certain LEC intrastate rate elements should be adjusted to eliminate subsidies. Ronan said it might be appropriate for some companies to make slight adjustments to their Montana carrier common line charge to remove certain payphone assets as specified by the FCC which wer

e previously included for ratemaking purposes.

26. The issues that were raised by MCI and AT&T in their filing, as they apply to USWC, would have been addressed in Docket No. D96.12.220, had AT&T not withdrawn from that proceeding. With the withdrawal of AT&T's testimony in Docket No. D96.12.220, the Commission determines there is no evidence indicating adjustments to USWC's intrastate service rates are necessary as a result of the FCC payphone orders. Similarly, there is no evidence to indicate adjustments to any other companies' intrastate service rates are necessary as a result of the FCC payphone orders. The Commission may revisit this issue in future access charge proceedings.

Decision on Non-Cost Issues

Commission Rules

27. Several parties who responded to the PSC's Notice of Inquiry identified ARM 38.5.3337(1) and (2) as PSC rule provisions that conflict with § 276 of the 1996 Act and with the FCC Payphone Orders. These rule provisions state:

PAY TELEPHONES (1) Carrier owned. Each exchange carrier must provide in each exchange at least one pay telephone available to the public at all hours, prominently located and lighted at night. All pay telephones shall be properly maintained and equipped with dialing instructions, a directory, local call price information and appropriate emergency telephone numbers. All pay telephones must comply with 10-4-121, MCA. (2) The commission may require a regulated carrier to install pay telephones at locations determined by the commission.

NPA suggested that ARM 38.5.3337(1) and (2) should be replaced by a non-discriminatory public interest payphone program and that the Commission's payphone rules should eliminate any distinction between "carrier-owned" and "cu

stomer-owned? payphones.

Citizens commented that any Commission rules that require carriers to provide payphone service are not allowed under the 1996 Act. Montana Independent Telephone Systems (MITS) stated that the provision that allows the Commission to require a regulated carrier to install payphones at certain locations is an exit restriction and recommended that it be eliminated or, at the very least, limited to public interest payphones as long as the costs for these phones can be recovered by the payphone provider. USWC recommended eliminating the first sentence of ARM 38.5.3337(1) and all of ARM 38.5.3337(2). AT&T and MCI said no provisions of ARM 38.5.3337 conflict with the 1996 Act or the FCC Payphone Orders.

28. ARM 38.5.3337(1) and (2) were adopted to ensure the availability of payphones to meet public safety and convenience concerns. However, the Commission agrees with NPA and MITS that unless and until the Commission establishes a public interest payphone program which allows payphone providers to recover the cost of the unprofitable payphones that may be required by this rule, these rule provisions are untenable under the 1996 Act and FCC payphone orders.

The Commission will revise this rule to eliminate the first sentence of (1) and the entirety of (2).

29. USWC recommends elimination of ARM 38.5.3337(7), which requires each exchange carrier to file with the Commission an annual report that lists the payphones in its service area that do not comply with applicable tariff requirements or Commission rules and to notify payphone providers of their noncompliance. The Commission declines to eliminate ARM 38.5.3337(7) as a part of the final order in this proceeding. However, USWC is entitled to petition the Commission, in a stand-alone filing, for the modification or elimination of the rule.

Local Coin Rate

30. The local coin phone rate has been deregulated in accordance with the FCC payphone orders since October 1997. All parties who commented,

except MCI, advised the Commission not to open a docket at this time to determine if market failures exist in Montana to such an extent that the Commission should step in and regulate the local coin rate. Commenters suggested waiting to see what effect deregulation of the local coin rate has on the payphone market. The Commission agrees with this suggestion.

Elimination of Semi-Public Payphone Tariffs

31. Parties were asked whether the FCC orders requiring deregulation of incumbent LECs? payphones extended to semipublic payphones as well. All parties that addressed this issue replied that the FCC orders require deregulation of all payphones, including semipublic payphones, and that LECs must terminate all subsidies for semipublic phones, just as they must for other payphones. The Commission agrees and will require all regulated LECs to file with the Commission to remove semipublic payphone provisions from their tariffs.

Nonstructural Safeguards for Non-BOC LECs

32. The FCC Payphone Orders preempted states' ability to impose structural separation requirements on the payphone operations of the Bell Operating Company (BOC) LECs or other LECs, but did not preempt the states from imposing on non-BOC LECs nonstructural safeguards that are no more stringent than those imposed by the FCC on the BOCs. Parties in this docket were asked to comment on this issue. All parties who provided comments, except USWC, were opposed to the idea of the Commission imposing these nonstructural safeguards on non-BOC LECs. They asserted there is not enough justification to require this and it would increase the cost of payphone service. The Commission agrees that there is insufficient justification at present to impose these nonstructural safeguards on non-BOC LECs.

Public Interest Payphones

33. The FCC defines "public interest payphone" as a payphon

e which: (1) fulfills a public policy objective in health, safety, or public welfare; (2) is not provided for a location provider with an existing contract for the provision of a payphone; and (3) would not otherwise exist as a result of the operation of the competitive marketplace. Report and Order, FCC 96-388, ¶ 281 (rel. Sept. 20, 1996). Each state must determine whether it needs to establish a public interest payphone program to ensure that payphones serving important public interests will continue to exist in light of the elimination of subsidies and other competitive provisions implemented pursuant to the 1996 Act and the FCC Payphone Orders. If a state establishes a public interest payphone program, it is responsible for administering and funding it.

34. Several parties made suggestions about public interest payphone programs should the Commission decide that a program is needed. USWC recommended the Iowa model, where the state commission has no public interest payphone program but decided instead that individual communities that want such programs would provide for them. USWC also recommended its current policy of offering to location providers the option of converting an unprofitable payphone to semipublic (where the location provider pays some of the cost) rather than removing the payphone. PTI said only those locations with undeniable public health and safety considerations should be included in a public interest payphone program. Citizens suggested the Commission review other states' programs before deciding whether to establish one in Montana. MCI suggested the Commission evaluate whether a program is needed by finding out where all the payphones are located now and using that information to produce a grid that shows the distance between payphones and whether the distance varies by type of exchange. AT&T said public interest payphones should offer unrestricted access and be located a minimum distance from other payphones. NPA noted that an obvious way to limit the need for a public interest payphone

program is to maintain cost-based rates for payphone providers that will encourage the proliferation of profitable payphones. NPA recommended that any public interest payphone program use a competitive bidding process to select the payphone provider for public interest locations or that state and/or local governments require payphone providers that win competitively bid contracts to serve lucrative government locations to also place public interest payphones as part of the contract. MITS recommended criteria to define public interest payphones based on their location; e.g. along highways, in hospitals, schools, in residential areas with low subscribership levels, and in low-income housing areas.

If a location met one of these criteria, MITS suggested, a test of cost versus revenue should be applied to determine the funding required from the program to allow the payphone provider to recover its costs. Ronan argued that if a payphone is not profitable, it is not in the public interest for the state or the Commission to require its placement. Ronan further stated that the traditional policy justification for a public interest payphone program is weakening as cellular coverage improves.

1. Parties also offered ideas for funding a public interest payphone program. USWC said a universal service fund may be an option for funding a program, but believes administering a plan funded this way would burden Commission staff as well as payphone providers and could result in situations that are not competitively neutral. MCI and AT&T said funding for any program should come from payphone providers. MCI suggested the funding should only allow recovery of certain costs (i.e., incremental/variable) and not include a contribution to fixed costs or overhead in order to eliminate any incentive to profit from placing public interest payphones. NPA recommended funding a program either using a state universal service fund or by spreading the cost over a wide base, such as payphone providers, interexchange carriers, all phone subscribers, or any combination of these. Ronan suggested if a

program is established, the subsidy that funds it should be listed as a separate line item on customers' phone bills that clearly states that the fee is to fund remote and/or unprofitable payphone locations.

36. The Commission declines to establish a public interest payphone program at this time. There is no evidence at this early stage of payphone deregulation that the competitive payphone marketplace is failing to serve the public interest. In time, a need to ensure payphones are available in certain well-defined locations for public health and safety reasons may become apparent. The Commission concludes that it should take no action at this time to further address a public interest payphone program.

CONCLUSIONS OF LAW

1. The Commission has authority to supervise, regulate and control public utilities. Section 69-3-102, MCA. Central, PTI, Citizens, Project, Valley, Ronan, and Hot Springs are public utilities offering regulated telecommunications services in the 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.

1. The United States Congress enacted the Telecommunication 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, 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 PSC is the state agency charged with regulating telecommunications carriers in Montana and properly exercises ju

jurisdiction in this docket pursuant to Title 69, Chapter 3, MCA.

4. Where the Commission has regulatory jurisdiction, it must apply federal law as well as state law, and where Congress has preempted state law, the Federal law prevails. See *FERC v. Mississippi*, 102 S.Ct. 2126 (1982). The FCC's regulations adopted to implement the Telecommunications Act of 1996 are binding on this Commission.

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.

ORDER

THEREFORE, based upon the foregoing, it is ORDERED that the tariff revisions filed by the parties with the Commission are resolved as set forth above and as follows:

1. Local exchange carriers shall revise their PAL tariffs as necessary so that the rates for "dumb" PAL lines are identical to the LEC's flat monthly business rates. LECs who wish to charge a "dumb" PAL rate that is greater than its monthly business rate must submit to the Commission sufficient information pursuant to the FCC's "new services test" to justify the LEC's proposed "dumb" PAL rate.

2. LECs which offer measured rate or message rate business lines must also offer measured rate or message rate "dumb" PAL line service.

3. LECs which offer "smart" PAL line service shall charge no more than the rate the Commission established for USWC's Smart PAL service unless the LEC files sufficient information to demonstrate that the proposed rate meets the FCC's "new services test."

4. The rates for "smart" PAL line service and for ancillary payphone-related services shall remain in place as permanent rates unless the rates exceed USWC's rates for similar services.

5. All regulated LECs shall file with the Commission to remove semipublic payphone provisions from their tariffs.

6. All regulated LEC's shall file permanent tariffs to replace the interim tariffs now in effect, permanent tariffs to be in accordance with this Final Order.

DONE AND DATED this 31st day of August, 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.

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DOCKET NO. D97.4.65, ORDER NO. 6051a