

-BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Negotiated)
Resale Agreement Between)
U.S. WEST COMMUNICATIONS, INC.,)
and BG ENTERPRISES, INC.)

DOCKET NO. 98-049-28
REPORT AND ORDER

ISSUED: December 9, 1998

By the Commission:

PROCEDURAL HISTORY

U.S. WEST COMMUNICATIONS, INC., ("USWC") and BG ENTERPRISES, INC., ("Reseller") entered into a resale agreement (hereafter "the agreement") dated August 17, 1998. USWC filed the Agreement with the Commission September 2, 1998, for review and approval in accordance with 47 USC 229 § 252(e)(1), a part of the Federal Telecommunications Act of 1996 (hereafter "the Act."). The Commission, having been fully advised in the matter, now enters the following Report, containing findings of fact, conclusions of law, and the Order based thereon.

FINDINGS OF FACT

1. The instant agreement is solely for the resale of finished services furnished by USWC. On its face, the instant agreement does not discriminate against any telecommunication carrier not a party to it.
2. The agreement appears to comport with the Act's § 251, and with currently effective Federal Communications Commission (FCC) regulations.
3. Reseller does not hold a certificate of convenience and necessity to provide local exchange service in the state of Utah.
4. The Division of Public Utilities, Utah Department of Commerce, recommended the Commission not approve the agreement on the basis that Reseller is neither a certificated Telecommunications Corporation nor an applicant for such authority.

CONCLUSIONS OF LAW

Under U.C.A. 54-8b-2.1, the Commission requires that telecommunications corporations must apply for and receive a certificate authorizing them to compete before they begin providing local exchange service in the state. That provision applies not just to facilities-based local exchange service providers but to resellers of local exchange service as well. The statutory standards for qualifying for a certificate are minimal and do not constitute a barrier to entry. We cannot achieve the statutory requirements to protect the public interest, monitor competition in the local exchange, and report our findings to the legislature if a segment of the industry is operating without a certificate. We encourage Reseller to seek a certificate and re-file the interconnection agreement.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

Approval of the Resale agreement between U.S. WEST COMMUNICATIONS, INC., and BG ENTERPRISES, INC., dated August 17, 1998, be and it hereby is, denied.

Any person aggrieved by this Order may petition the Commission for review within 20 days of the date of this Order. Failure so to do will forfeit the right to appeal to the Utah Supreme Court.

Dated at Salt Lake City, Utah, this 9th day of December, 1998.

/s/ Stephen F. Mecham, Chairman

(SEAL) /s/ Constance B. White, Commissioner

/s/ Clark D. Jones, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary