

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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APPLICATION OF U S WEST COMMUNI-) DOCKET NO. 95A-582T
CATIONS, INC., AND SOUTH PARK)
TELEPHONE COMPANY TO TRANSFER)
SERVICE TERRITORY.)

RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
KEN F. KIRKPATRICK
GRANTING APPLICATION WITH CONDITIONS

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Mailed Date: May 20, 1996
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I. STATEMENT

1. On December 7, 1995, U S WEST Communications, Inc. ("U S WEST"), and South Park Telephone Company ("South Park") filed a Joint Application for Authority to Transfer Service Territory. The Commission gave notice of the application on December 13, 1995. On January 18, 1996, U S WEST and South Park filed their amended application, of which the Commission gave notice on February 9, 1996.

2. Staff of the Commission filed its intervention on January 31, 1996. There were no other interventions.

3. The application was deemed complete by operation of the Commission's Rules of Practice and Procedure on March 5, 1996. By order setting hearing and notice of hearing dated March 27, 1996, the matter was set for a hearing to be held on May 10, 1996.

4. By Decision No. R96-378-I, April 5, 1996, a prehearing conference was scheduled for April 23, 1996 at which time the parties were to submit a stipulation. On April 23, 1996, the prehearing

conference was held. Testimony in support of the stipulation was offered and by Decision No. R96-433-I, April 25, 1996, the stipulation was accepted. That order further changed the May 10, 1996 hearing to a hearing for public comment to be held from 4:00 p.m. to 6:00 p.m. in Fairplay, Colorado.

5. The public comment hearing was held as scheduled, and five members of the public testified in support of the application. No one spoke in opposition to the application.

6. In accordance with § 40-6-109, C.R.S., the undersigned transmits to the Commission the record and exhibits in this proceeding along with a written recommended decision.

A. Findings of Fact

1. The original application filed sought only to transfer certain service territory located in the southern end of Park County, Colorado, from U S WEST to South Park. The amended application expanded the territory subject to this application to include adjacent area that the parties state was previously uncertificated.

2. U S WEST has no plant or facilities within the area proposed for transfer. It does not serve any customers. While there had been requests for service in the past, upon quotation of the applicable line extension charge ("LEC"), the potential customers have failed to make a deposit or pay the LEC.

3. South Park seeks to provide service to an area where U S WEST has not provided service by obtaining construction loans

from the Rural Utilities Service ("RUS") as well as expedited money from the federal Universal Service Fund ("USF"). South Park is candid in its representation that without either of these two funding sources, it will not be able to provide telephone service in this territory.

4. Due to the size of the applicable line extension charges (up to \$30,000), it is unlikely that telephone service will be provided in this area of Park County should this application be denied. The parties agree, and the undersigned finds, that the public interest requires that this application be granted in order to make local exchange telecommunications service available to the residents of the service territory. In previously accepting the stipulation in this proceeding, the undersigned agreed with the conditions proposed by the parties, namely, that the grant of any certificate of public convenience and necessity ("CPCN") would be conditioned upon three conditions being met by South Park within one year. Those conditions are: (1) South Park obtain regulatory approval from any local government within the service territory necessary to conduct telephone or telecommunications services; (2) South Park receive approval from the appropriate federal agencies for expedited participation in the universal support fund mechanism; and (3) South Park obtain approval and actual funding from RUS of all monies necessary to build facilities and commence operations to provide basic local exchange service.

5. The granting of this application will promote the public interest. The granting of this application will not adversely

impact the public switched network or the financial integrity of U S WEST or South Park.

B. Conclusions

1. The proposed application is in the public interest and it should be granted. U S WEST should be authorized to transfer certain territory to South Park, and South Park should be conditionally granted a CPCN to provide telecommunications service in the territory transferred as well as the additional territory as set forth in the amended application.

2. In accordance with § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

II. ORDER

The Commission Orders That:

1. Docket No. 95A-582T, being an application of U S WEST Communications, Inc., and South Park Telephone Company is granted. U S WEST Communications, Inc., is authorized to transfer certain service territory to South Park Telephone Company as more fully set forth in the application. This transfer includes rights to operate as a local exchange telecommunications provider and all grandfather rights under § 40-15-302(4), C.R.S. South Park Telephone is granted a certificate of public convenience and necessity to operate these rights in this territory.

2. South Park Telephone Company is granted a certificate of public convenience and necessity to operate as a local exchange

provider of telecommunications service in the additional territory set out in this application as amended.

3. These grants of certificates of public convenience and necessity in Ordering Paragraphs Nos. 1 and 2 above, and the authority to transfer granted in Ordering Paragraph No. 1 above, are contingent upon the following three conditions all being met within one year of the effective date of this order:

- (1) South Park Telephone Company shall obtain regulatory approval from any local government within the service territory necessary to conduct telephone or telecommunications services;
- (2) South Park Telephone Company shall receive approval from the appropriate federal agencies for expedited participation in the universal support fund mechanism; and
- (3) South Park Telephone Company shall obtain approval and actual funding from the Rural Utilities Service of all monies necessary to build facilities and commence operations to provide basic local exchange service as defined in § 40-15-102(3), C.R.S., or as hereinafter defined by the Commission within the service area affected.

Should any of the above conditions not be satisfied within one year of the effective date of this Order, then the portion of this Order which grants the application shall be void.

4. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

5. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

- a. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the Decision is stayed by the Commission upon its own motion, the recommended decision shall become the Decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.
- b. If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the Administrative Law Judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

6. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO


Administrative Law Judge

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