



December 3, 1999

Mr. William J. Bullard, Executive Director
South Dakota Public Utilities Commission
State Capitol
500 East Capitol
Pierre, South Dakota 57501

RECEIVED

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SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

FAX Received DEC 02 1999

RE: PETITION FOR DECLARATORY RULING

Dear Mr. Bullard:

On behalf of McLeodUSA Incorporated, ("McLeod"), I have enclosed one original and ten copies of the **PETITION FOR DECLARATORY RULING**. This **PETITION** has been served on all parties of this docket by mail this same date.

Sincerely,

Kristie Lyngstad
Administrative Manager

Enclosures

CC: Service List

29705 453rd Ave.
P.O. Box 66
Irene, SD 57037
Phone: 605-263-7214
Fax: 605-263-3844

**State of South Dakota
Public Utilities Commission**

Petition for Declaratory Ruling

Pursuant to the provisions of SDCL § 1-26-15 and Rule 20:10:01:34 of the Administrative Rules of South Dakota, McLeodUSA Telecommunications Services, Inc. (McLeodUSA), of McLeodUSA Technology Park, 6400 C Street SW, P.O. Box 3177, Cedar Rapids, IA 52406-3177, as represented by counsel Barbara E. Berkenpas and William P. Heaston, located at 29705 453rd Avenue, P.O. Box 66, Irene, SD 57037-0066, hereby petitions the the South Dakota Public Utilities Commission (Commission) for its declaratory ruling in regard to the following:

1. The state statutes in question are:

SDCL § 49-31-11, specifically the prohibition highlighted as follows:

No telecommunications company may . . . unjustly or unreasonably prejudice or disadvantage any person, in the provision of any telecommunications service.

SDCL § 49-31-1(27), which contains the following highlighted definition of a telecommunications service:

"Telecommunications service," the transmission of signs, signals, writings, images, sounds, messages, data or other information of any nature by wire, radio, lightwaves, electromagnetic means, or other similar means. It does not include the provision of terminal equipment used to originate or terminate such service, broadcast transmissions by radio, television and satellite stations regulated by the federal communications commission and one-way cable television service;

SDCL § 49-31-1(26) defines a telecommunications company. With regard to this petition there is no question that U S WEST Communications, Inc. (U S WEST) is a telecommunications company as defined by state law.

2. The facts and circumstances which give rise to the issue to answered by the Commission are:

a. U S WEST is a telecommunications company as that term is defined by SDCL § 49-31-1(26), and a local exchange company certified by the Commission to provide telecommunications services in the state of South Dakota. The Commission can take official notice of the orders certifying U S WEST as telecommunications company in South Dakota.

b. U S WEST offers Voice Messaging Service (VMS) pursuant to its South Dakota Exchange and Network Services Catalog (Catalog). The terms, conditions and prices for the current VMS offering for both business and residential local exchange telecommunications customers is found in Section 10.12 of the Catalog. The Catalog provisions are attached as Exhibit A. There is nothing in the Catalog that restricts the selling of VMS to residential or business customers either to individual customers, in bulk or in large numbers, or for any customer to then resell to others.

c. VMS is a telecommunications service as that term is defined by SDCL § 49-31-1(27). VMS is the transmission of signs, signals, writings, images, sounds, messages, data or other information of any nature by wire, radio, lightwaves, electromagnetic means, or other similar means

d. McLeodUSA, as a service to its customers, buys VMS from U S WEST under the terms and conditions and at the retail rates published by U S WEST in the Catalog. It then resells the VMS to its customers at the same rate, and under the same terms and conditions, as in the Catalog. The purchase and resale of VMS is not done pursuant to a resale agreement or pursuant to any wholesale discount required by the Telecommunications Act of 1996.

e. On September 22, 1999, McLeodUSA became aware for the first time that the sale of VMS by U S WEST in South Dakota to McLeodUSA would be discontinued. The only reason stated for this action by U S WEST is that it is not required to sell VMS for resale by competitors. Despite attempts to have the decision concerning the retail provisioning of VMS to McLeodUSA changed, U S WEST is now prepared to disconnect over 400 VMS customers in South Dakota because they are also customers of a competitor, McLeodUSA.

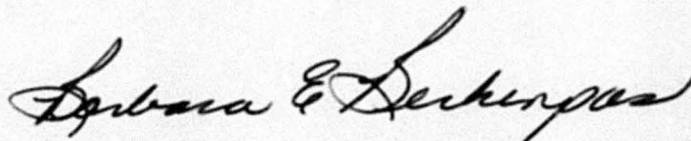
f. McLeodUSA may be successful in keeping these customers on a VMS platform provided by McLeod or another vendor, but at a cost for local transport, much of which is controlled by and must be purchased from U S WEST.

g. There is no good or justifiable business reason to single out the purchase at retail of VMS by a competitor, who then resells the service, as a target for making the service not available as described in the Catalog. There is an unjust and unreasonable purpose in making the provisioning of competitive local exchange service more difficult and expensive to the competitor by denying the competitor access to a locally provided VMS platform, even though the competitor is willing to pay the full retail price for that service. This is just another attempt by U S WEST to inhibit competition in its South Dakota local exchange market in violation of explicit state law prohibiting such discriminatory conduct. U S WEST should welcome the opportunity to sell as much of its VMS product, at full retail prices, as it can. Instead it is willing to force its own VMS customers to seek an alternative source for VMS, or come back to U S WEST for all of its local services to get access to the VMS platform.

The bases for the factual representations in subparagraphs d through f are contained in the affidavit attached as Exhibit B.

3. The precise issue to be answered by the Commission's ruling is: The discontinuance of the retail sale of VMS by U S WEST to McLeodUSA for purposes of resale is an unjust and unreasonably discriminatory action by U S WEST in violation of SDCL § 49-31-11.

Dated at Irene, South Dakota, this 2 day of December, 1999



Barbara E. Berkenpas
William P. Heaston
McLeod Telecommunications Services, Inc.
29705 453rd Avenue
P.O. Box 66
Irene, SD 57037-0066
(605) 263-7213

Its Attorneys

EXHIBIT A

U S WEST COMMUNICATIONS, INC.

Exchange and Network Services Catalog

SECTION 10

Page 23

Release 6

State of South Dakota
Issued: 2-20-97

Effective: 2-24-97

10. MISCELLANEOUS SERVICE OFFERINGS

10.12 VOICE MESSAGING SERVICE

10.12.1 RESIDENCE VOICE MESSAGING SERVICE

(T)

A. Description

U S WEST Residence Voice Messaging Service (VMS) provides an audio mailbox to record, store, retrieve, review, save and to handle audio messages for residence customers. The service will greet incoming callers with a personal or a standard greeting in either English or Spanish. It provides audio prompts and personal security codes for customers and users of the service. Customers can send, reply and copy/forward messages to others on the same local messaging system as well as send messages to others on the same messaging system without having to dial their telephone numbers/mailbox numbers one at a time. Customers can access the service from any tone signaling telephone. Listed below are the types of VMS available to residence customers:

(T)

1. Mailboxes

Call Forwarding-Busy Line/Don't Answer with Message Waiting Indication

This capability is provided by equipping a customer's telephone service with Call Forwarding-Busy Line/Don't Answer (CFBDA) and with Message Waiting Indication (MWI) in addition to a voice messaging mailbox. CFBDA automatically forwards incoming calls to the mailbox when the customer's telephone line is busy or does not answer. MWI provides a stutter dial tone when messages are waiting.

Call Forwarding-Busy Line/Don't Answer with Message Waiting Indication - Simultaneous (CFBDA/MWI-S)

This capability is provided by equipping a customer's telephone service with CFBDA and with MWI in addition to a voice messaging mailbox. CFBDA automatically forwards incoming calls to the mailbox when the customer's telephone line is busy or does not answer. CFBDA/MWI-S provides a simultaneous stutter dial tone and light indicator when messages are waiting.

Mailbox Only

This capability is provided by equipping a customer's telephone service with a voice messaging mailbox only. It does not include any other service or feature. Customers subscribing to Mailbox Only must have their lines equipped with a Call Forwarding feature at rates and charges specified elsewhere. In addition, customers wishing to receive notification of new messages waiting to be retrieved, must have their lines equipped with Message Waiting Indication at rates and charges specified elsewhere.

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Issued: 4-7-98

Effective: 4-9-98

10. MISCELLANEOUS SERVICE OFFERINGS

10.12 VOICE MESSAGING SERVICE

10.12.1 RESIDENCE VOICE MESSAGING SERVICE (Cont'd)

2. Optional Features

Message Notification

This option provides for the delivery or notification of new messages to a different location other than the customer's mailbox number. The customer has the option of sending messages to another telephone number or pager. The customer will have the ability to turn the notification on or off.

Additional Message Capacity

This option allows customers to have additional capacity added to their mailbox which will allow them to save either an additional 50 or 100 messages for a maximum of 100 days. Customers who subscribe to Extension Mailbox may only purchase an additional 50 messages.

Extension Mailbox

This option gives the customer three reduced function mailboxes, in addition to their personal mailbox. Messages can be left for any of these extension mailboxes by pressing certain digits on a tone signaling telephone. Each of the extension mailboxes can have a personal greeting which is played after the caller makes a selection. Messages left in an extension mailbox can only be retrieved using the extension mailbox's security code.

(C)
(C)

(N)

(N)

B. Terms and Conditions

1. VMS will be provided 24 hours per day, 7 days per week.
2. The Company may disconnect without advance notice, any VMS which is used in such a manner as to prevent, obstruct, delay or otherwise interfere with the service of other users.
3. The Company, at its discretion, may change the customer interface such as the recorded prompts and directions, the length of time available for leaving messages, the number of messages which may be left and other aspects of the service without prior notice to the customer.

(M)

(M) Material moved to Page 23.2.

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10. MISCELLANEOUS SERVICE OFFERINGS

10.12 VOICE MESSAGING SERVICE

10.12.1 RESIDENCE VOICE MESSAGING SERVICE

B. Terms and Conditions (Cont'd)

4. Customers subscribing to *MARKET EXPANSION LINE* may subscribe to Mailbox Only. These customers would not subscribe to another Call Forwarding feature nor would Message Waiting Indication be necessary. (M)
5. The Company may apply, at no charge, additional features for the purpose of enhancing service. Easy Access, removal of the audio logo and the restart function are examples of these features.
6. Customers may save up to 35 messages for up to 100 days. Additional message capacity may be purchased as specified in C., following. (M)

C. Rates And Charges (M1)

1. The rates and charges for VMS with CFBDA/MWI or CFBDA/MWI-S include the provision of Call Forwarding-Busy Line/Don't Answer and Message Waiting Indication.
2. Except as otherwise indicated, the rates and charges for VMS are in addition to all rates and charges for the associated service.
3. When, at the request of the customer, changes are made to existing VMS, the nonrecurring charge shall apply. (M1)

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10. MISCELLANEOUS SERVICE OFFERINGS

10.12 VOICE MESSAGING SERVICE

10.12.1 RESIDENCE VOICE MESSAGING SERVICE

C. Rates and Charges(Cont'd)

(M)

4. Changes in the ringing cycle associated with the Call Forwarding Busy Line/Don't Answer feature may be charged for in accordance with the charges for that feature
5. The rates and charges may not apply to customers who subscribe to VMS during the term of a Voice Messaging promotion. A promotion may be in the form of a coupon offer. The periods and provisions of such promotion will be determined by the Company.
6. The rates and charges are as follows:

	USOC	NONRECURRING CHARGE	MONTHLY RATE
• Mailboxes, each line arranged[1]			
- With CFBDA/MWI	VMJXA	\$6.00	\$6.95
- Discounted[2]	V4DXA	-	4.95
- With CFBDA/MWI-S	VMJXB	6.00	6.95
- Discounted[2]	V4DXB	-	4.95
- Mailbox only	VMJXX	6.00	6.95
- Discounted[2]	V4DXX	-	4.95
• Optional Features, each line arranged[3]			
- Additional Message Capacity			
- 50 Messages	VMC1X	-	3.00
- 100 Messages[4]	VMC2X	-	6.00
- Extension Mailbox	VBS	-	2.00
- Discounted[2]	V5D	-	1.00
- Message Notification	VFN	-	3.00
- Discounted[2]	V6D	-	2.00
- Spanish	S8V	-	-

(T)
(N)
(N)

- [1] The nonrecurring charge does not apply when changing from one type of Voice Messaging to another.
- [2] Discounted rate applies when this mailbox is added as a part of *CUSTOMCHOICE*.
- [3] The nonrecurring charge applies only when ordered subsequent to the installation of service.
- [4] This feature is not available with Extension Mailbox.
- (M) Material moved to Page 23.2.

(N)

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State of South Dakota

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10. MISCELLANEOUS SERVICE OFFERINGS

10.12 VOICE MESSAGING SERVICE (Cont'd)

10.12.2 BUSINESS VOICE MESSAGING SERVICE

(T)

A. Description

1. *U S WEST* Business Voice Messaging Service (BVMS) can answer incoming calls, placed to the customer's telephone line, when the called number is busy or if the called number is not answered. The service will greet incoming callers with a personal or a standard greeting in either English or Spanish. It then receives and saves the caller's messages for review by the customer. Customers can retrieve messages left for them from any tone signaling telephone.

(T)

2. Mailboxes

The following mailbox is available with BVMS. This mailbox is provided on a stand alone basis, in association with one or more additional mailboxes, or with one or more options.

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(T)

Voice Mail

(C)

This mailbox answers incoming calls placed to the customer when their telephone number is busy or if the call is not answered. The Voice Mail mailbox can greet callers with a personal or standard greeting. The mailbox receives and saves the caller's message for review by the customer. The basic features of the Voice Mail mailbox include route to other number, personal and extended absence greeting, security code, receiving and disposing of messages, pause, skip-forward, skip-backwards and replay of messages. Customers can also send, reply and copy/forward messages to others on the same local messaging system, as well as, send messages to others on the same messaging system without having to dial their telephone numbers/mailbox numbers one at a time. Customers can retrieve messages left for them from any tone signaling telephone.

(C)

(D)

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10. MISCELLANEOUS SERVICE OFFERINGS

10.12 VOICE MESSAGING SERVICE

10.12.2 BUSINESS VOICE MESSAGING SERVICE

A. Description (Cont'd)

3. Optional Feature Mailboxes

Call Routing

This feature is a front-end call routing service, using menu selections, that helps callers make quick connections to a particular customer's or department's mailbox by pressing single digits on a tone signaling telephone. This feature is used with two or more Voice Mail mailboxes. Calls placed to a call router may be directed to any other call router. (C)

This feature is not technically compatible with an extended absence greeting.

Call Routing to Number

This feature is a front-end call routing service, using menu selections, that helps touch-tone callers make quick connections to a particular customer's or department's Voice Mail mailbox, or another local or 800/800 type telephone number. Below are the potential options a caller will have once they are in the call routing mailbox:

- Route to a Voice Mail mailbox, leave a message or press "0" and route to the customer's attendant, and/or,
- Route to another telephone number. If this number is busy, isn't answered, or is answered by some form of telephone answering, the caller will not be routed back to the original routing mailbox.

Calls routed via this service may route to numbers within the same local calling area or 800/800 type numbers. The customer has the option of selecting a default option for calls placed from rotary dial telephones. This feature must be used in conjunction with two or more Voice Mail mailboxes which are billed to the same telephone number.

This feature is not technically compatible with an extended absence greeting.

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10. MISCELLANEOUS SERVICE OFFERINGS

10.12 VOICE MESSAGING SERVICE

10.12.2 BUSINESS VOICE MESSAGING SERVICE

A.3. (Cont'd)

Extension Mailbox

This option gives the customer three reduced function mailboxes, in addition to their personal mailbox. Messages can be left for any of these Extension Mailboxes by pressing certain digits on a tone signaling telephone. Each of the Extension Mailboxes can have a personal greeting which is played after the caller makes a selection. Messages left in an Extension Mailbox can only be retrieved using the individual Extension Mailboxes' security code. This option is not technically compatible with Scheduled Greetings or an extended absence greeting.

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(C)

4. Optional Features

Additional Message Capacity

This option allows customers to have additional capacity added to their mailbox which will allow them to save either an additional 50 or 100 messages for a maximum of 100 days. Additional message capacity of 100 messages is not compatible with Extension mailboxes.

(C)

Call Router Traffic Study (CRTS)

A CRTS is a custom report that identifies, by call router, the number of calls routed to each menu selection. CRTS is available to customers subscribing to Call Routing and/or Call Routing to Number feature(s).

Data is available only on a monthly basis, i.e., the report period starts on the first day of a month and ends on the last day of that month. Studies may be requested for one or more months. Rotary calls will be included in the return to other number count.

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(M1) Material moved to Page 28.

(M2) Material moved to Page 26.

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10. MISCELLANEOUS SERVICE OFFERINGS

10.12 VOICE MESSAGING SERVICE

10.12.2 BUSINESS VOICE MESSAGING SERVICE

A.4. (Cont'd)

Message Notification

This option provides for the delivery or notification of new messages to a different location other than the customer's mailbox number. The customer has the option of sending notification or messages to another number in their BVMS system, or notification only to a local telephone number or pager. A notification schedule may be established to call the customer immediately when new urgent messages are left in the customer's mailbox or when any message is left. The customer will have the ability to turn the notification on or off.

Scheduled Greetings

This option offers the customer the ability to have two separate greetings that would play at different times during the workday. These "open" and "closed" greeting times would be controlled by the customer. The customer can also designate that either of these greetings be played at different times during the weekend.

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(M3)

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(M1) Material moved from Page 26.

(M2) Material moved from Page 27.

(M3) Material moved to Page 27.

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10. MISCELLANEOUS SERVICE OFFERINGS

10.12 VOICE MESSAGING SERVICE

10.12.2 BUSINESS VOICE MESSAGING SERVICE (Cont'd)

(T)

B. Terms and Conditions

1. The minimum service period for BVMS is one month.
2. BVMS will be provided 24 hours per day, 7 days per week.
3. BVMS will be provided where technically and/or economically feasible and where sufficient demand exists to warrant the provision of the service.
4. Customers subscribing to BVMS should have their lines equipped with Call Forwarding - Variable, Call Forwarding Busy Line, Call Forwarding Don't Answer, Call Forwarding Busy Line/Don't Answer, or Remote Access Forwarding/Scheduled Forwarding in order to transport their calls to the voice response unit. Customers wishing to receive notification of messages waiting to be retrieved must have their lines equipped with message waiting indication.
5. The Company does not guarantee this service. However, in the event of an interruption to the service which is not due to the negligence or willful act of the customer or the premises facilities beyond the Demarcation Point, a pro rata adjustment of the monthly charge for the service will be allowed. The adjustment will be allowed during the time said interruption continues for 24 hours or more. The customer must contact the Company within a reasonable time (generally 30 days) or the Company may not be able to provide the adjustment. (T)
6. The sole remedy for errors, omissions and out of service conditions, even if it is the Company's fault, is the out of service credit. The Company shall not be liable for any other damages regardless of the theory, whether direct, indirect, incidental, special or consequential.

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10. MISCELLANEOUS SERVICE OFFERINGS

10.12 VOICE MESSAGING SERVICE

10.12.2 BUSINESS VOICE MESSAGING SERVICE

(T)

B. Terms and Conditions (Cont'd)

7. The Company makes no warranties to the customer and it expressly excludes and disclaims any implied warranties such as warranties of fitness for a particular purpose or merchantability.
8. The Company's voice messaging systems are designed to accommodate the user whose primary need is to have the user's telephone answered and messages taken on occasions when the user cannot or chooses not to answer the telephone. This service is not for use as an information service product that may be used by information providers whose primary use is to communicate information to a large number of callers or for use on other than a business exchange access line. If the Company determines that the customer will use the service as an information service, the Company reserves the right not to sell the service, or if the customer is using it as such, the Company may cancel the service.
9. The Company may disconnect, without advance notice, any BVMS which is used in such a manner as to prevent, obstruct, delay or otherwise interfere with the service of other users.
10. The Company, at its discretion, may change the customer interface such as the recorded prompts and directions, the length of time available for leaving messages, the number of messages which may be left and other aspects of the service without prior notice to the customer.
11. The Company may apply, at no monthly charge, additional features for the purpose of enhancing service. Easy access, Spanish, and the restart function are examples of these features.
12. Any long distance or usage charges that may be generated when using Call Routing to Number will be the responsibility of the Call Routing to Number customer.

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10. MISCELLANEOUS SERVICE OFFERINGS

10.12 VOICE MESSAGING SERVICE

10.12.2 BUSINESS VOICE MESSAGING SERVICE

(T)

B. Terms and Conditions (Cont'd)

13. Customers with a Voice Mail mailbox may save up to 35 messages for up to 100 days. Additional message capacity may be purchased as specified in C., following. (C)
14. During a Call Router Traffic Study, changes may not be made to the menu selections because changes will invalidate the report data.

C. Rates and Charges

1. The nonrecurring charges may not apply to customers who subscribe to BVMS during the term of a BVMS promotion. The periods and provisions of such promotion will be determined by the Company. A promotion may be in the form of a coupon offer. (C)
2. The monthly rate may be refunded to customers who subscribe to BVMS during the term of a BVMS promotion. The periods and provisions of such promotion will be determined by the Company. A promotion may be in the form of a coupon offer. (C)
3. The CRTS monthly rate applies for each menu selection on the call router being studied. (T)

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10. MISCELLANEOUS SERVICE OFFERINGS

10.12 VOICE MESSAGING SERVICE

10.12.2 BUSINESS VOICE MESSAGING SERVICE

C. Rates and Charges (Cont'd)

4. Changes in the ringing cycle associated with the Call Forwarding-Busy Line/Don't Answer feature will be charged for in accordance with the rates and charges for that feature.
5. The "add and/or change..." nonrecurring charge applies for each mailbox added or changed. (C)
6. The rates and charges for BVMS are in addition to all rates and charges for the associated underlying service.

a. Nonrecurring Charges

The following nonrecurring charges apply.

	USOC	NONRECURRING CHARGE	
• Add and/or change mailbox(es) and/or feature(s), per mailbox[1,2,3]	REAVD	\$10.00	(T)
• Call Router Traffic Study, add or change, per menu selection	SEPVS	39.00	

- [1] Charge does not apply to optional features when associated with a new mailbox(es) being activated or when optional features are ordered subsequent to initial installation of associated mailbox. (C)
(C)
- [2] Customers may make from one to ten number changes to each call router associated with Call Routing to Number with each order placed. This note does not apply to changes in the Call Routing feature.
- [3] Charge does not apply to add Extension Mailbox. (N)

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10. MISCELLANEOUS SERVICE OFFERINGS

10.12 VOICE MESSAGING SERVICE

10.12.2 BUSINESS VOICE MESSAGING SERVICE

C.6. (Cont'd)

b. Monthly Rates - Month-to-Month

	USOC	MONTHLY RATE	
• Mailboxes, each			
- Voice Mail	MBB,MBBXA	\$12.75	
- Discounted[1]	MBJ	11.00	
- Discounted[2]	-	10.75	(N)
• Optional mailboxes, each			
- Call Routing[3]	VPH,VPHXA	3.00	(T)
- Call Routing to Number[3]	VJMXU,VJMXV	12.00	(T)
- Extension Mailbox	VBS	5.00	
• Optional features, per mailbox, each			
- Additional Message Capacity			
- 50 Messages	VMC1X	3.00	
- 100 Messages	VMC2X	6.00	
- Call Router Traffic Study, per menu selection	VTM+X	5.00	
- Message Notification	VFN	3.00	
- Scheduled Greetings	VGX	3.00	

[1] The discounted rate applies when subscribed to in association with a *SMARTSET PLUS* Package. No nonrecurring charge will apply if subscribed to on the same order as a *SMARTSET* Package.

[2] The discounted rate applies when subscribed to in association with Business *CUSTOMCHOICE*. No nonrecurring charge will apply if subscribed to on the same order as Business *CUSTOMCHOICE*.

[3] A minimum of two mailboxes is required.

(N)

(N)

(T)

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10. MISCELLANEOUS SERVICE OFFERINGS

10.12 VOICE MESSAGING SERVICE

10.12.2 BUSINESS VOICE MESSAGING SERVICE

C.6. (Cont'd)

c. Monthly Rates - Volume Discounted

Volume discounts are offered to customers, which allows customers to pay a guaranteed fixed monthly rate for Voice Messaging over a 1- to 6-year period. Customers who sign an agreement are guaranteed against Company initiated changes in the monthly rates for the length of the agreement. The minimum service period for these agreements is 12 months and mailbox quantities may vary within the contracted price category. The terms specified in the Termination Liability/Waiver Policy in 2.2.14 of the Exchange and Network Services Tariff apply.

12 TO 23 MONTHS	24 TO 35 MONTHS	36 TO 59 MONTHS	60 TO 72 MONTHS
--------------------	--------------------	--------------------	--------------------

• Mailboxes, each

- Voice Mail

2 - 5	\$11.48	\$11.22	\$10.84	\$10.84
6 - 35	11.22	10.84	10.46	10.20
36 - 60	10.84	10.46	10.20	9.95
61 - 150	10.46	10.20	9.95	9.56
151 - 500	10.20	9.95	9.56	9.18
501 +	10.20	9.56	9.18	8.93

- Centrex 21 Voice Mail

12 TO 36 MONTHS	37 TO 60 MONTHS
--------------------	--------------------

2 - 5	\$10.20	\$10.20
6 - 35	10.20	10.20

(M)
(N)

(N)

(M) Material moved to Page 33.1.

NOTICE

THE INFORMATION CONTAINED IN THIS DOCUMENT IS SUBJECT TO CHANGE.

U S WEST COMMUNICATIONS, INC.

Exchange and Network Services Catalog

SECTION 10

Page 33.1

Release 1

State of South Dakota

Issued: 4-21-98

Effective: 4-27-98

10. MISCELLANEOUS SERVICE OFFERINGS

10.12 VOICE MESSAGING SERVICE

10.12.2 BUSINESS VOICE MESSAGING SERVICE

C.6.c.(Cont'd)

	12 TO 23 MONTHS	24 TO 35 MONTHS	36 TO 59 MONTHS	60 TO 72 MONTHS	(M)
• Optional Features, per mailbox, each					
- Additional Message Capacity - 50 Messages	\$2.50	\$2.25	\$2.00	\$1.75	
- Message Notification	2.50	2.25	2.00	1.75	
- Scheduled Greetings	2.50	2.25	2.00	1.75	(M)

(M) Material moved from Page 33.

NOTICE

THE INFORMATION CONTAINED IN THIS DOCUMENT IS SUBJECT TO CHANGE.

Exhibit B

AFFIDAVIT

I, Diane M Bowers, Senior Manager, ILEC Relations, McLeodUSA Incorporated, 6400 C Street SW, Cedar Rapids, IA, 52406, having been duly sworn, do state as follows:

During the months of July and August, 1999, we at McLeodUSA became aware that U S WEST was contemplating discontinuing the provisioning of its Voice Messaging Service (VMS) in some of its states. The state most mentioned was Colorado. South Dakota was not mentioned at that time. Several months later it became evident that unless a commission had ordered otherwise, VMS for McLeod customers would be discontinued by U S WEST wherever possible.

I and others at McLeodUSA responsible for the daily business interaction between U S WEST and McLeodUSA work with a product and customer account team located in Minneapolis. The three principal U S WEST personnel are Pat Kline, Jean Novak and Jerry Bezdicek. All communications with U S WEST concerning the provisioning of services like VMS must go through this account team.

McLeodUSA purchases VMS for U S WEST at retail prices from U S WEST's South Dakota Local Exchange and Network Services Catalog. McLeodUSA has approximately 450 customers using U S WEST's VMS product in South Dakota. The VMS is purchased to be used by McLeodUSA customers who have local exchange service through the resale of U S WEST's Centrex service in South Dakota. McLeodUSA does purchase Centrex service at a wholesale discount for resale in U S WEST's local exchange markets.

On or about September 22, 1999, I and other McLeodUSA personnel became aware that VMS would be discontinued in South Dakota when we received notification that service would be denied starting that day. McLeodUSA had received no notice of this action prior to that. With the assistance of the account team, we were able to stop the discontinuance of service. At this time we at McLeodUSA were not informed by U S WEST that the activities of this day started a 60 business day clock (until November 23, 1999?) for no longer providing VMS to McLeodUSA in South Dakota. If the 60 day business clock started on September 23d, then the 60th business day would be on December 16, 1999. On September 23, 1999, we did inquire about whether we would be getting 60 business days' notice, but did not receive a response. We also advised U S WEST that we were working on providing VMS through alternative means.

On November 3, 1999, Jean Novak advised us that she had implemented a 60 day clock "per your request." McLeodUSA did not request a 60 day clock, we did request 60 days' notice. On the next day I received another communication from Jean Novak mentioning a 60 business day period and further stating that 30 business days after November 23d (January 10, 2000?), U S WEST would begin "stripping" all VMS from

McLeodUSA's customers. If November 23, 1999, is the 60th business day, then notice would have to be given on August 31st. No formal notice of the 60 business day clock for South Dakota customers was ever received by McLeodUSA.

McLeodUSA has been working with the U S WEST account team to purchase transport services, such as Message Delivery Service (MDS). Based on previous experiences ordering this service from U S WEST, we will not meet a 60 day clock. We ordered MDS in Colorado in January, 1999, and were advised by our U S WEST account team, in November, 1999, that these orders were incorrect. Yet being fully cognizant of its failure to provide MDS in Colorado, U S WEST chose to move forward with removing the VMS service from all McLeodUSA South Dakota customers effective 11/30/99. McLeodUSA is forced to utilize a costly option to continue to provide VMS to its customers and has ordered MDS for South Dakota. To date, MDS orders have not been completed by U S WEST in the state of South Dakota.

Throughout this ordeal I have tried to discern a legitimate business purpose in cutting off McLeodUSA from access to this retail service offering. I realize I am not privy to the business plans of U S WEST for its VMS product. But it seems indeed an odd business decision by U S WEST to force 450 of its VMS customers in South Dakota to seek an alternative provider. The customer has a limited choice – get an alternative provider, or come back to U S WEST for all of your local services. The only reason I have been given for this decision is that U S WEST does not want to sell its VMS to a competitor regardless of the price the competitor pays for it.

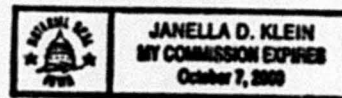
Diane M. Bowers

Diane M. Bowers
Senior Manager
ILEC Relations
McLeodUSA Incorporated

Diane M. Bowers personally appeared before me this 2nd day of December, 1999, and swore to and signed this affidavit.

Janella D. Klein

Notary Public



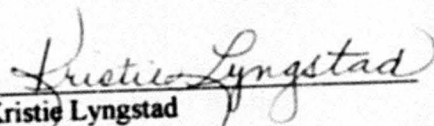
CERTIFICATE OF SERVICE

I, Kristie Lyngstad, do hereby certify that on the 3rd of December, 1999, a true and correct copy of the foregoing Petition for Declaratory Ruling, of McLeodUSA Incorporated, was served by first class United States mail, upon the following:

William J. Bullard
Executive Director
SD Public Utilities Commission
500 Capitol Ave
Pierre, SD 57501

Thomas J. Welk
Boyce, Murphy McDowell & Greenfield, LLP
101 North Phillips Ave., Suite 600
P.O. Box 5015
Sioux Falls, SD 57117-5015

Alex Duarte
US West Communications
1801 California, 51st Floor
Denver, CO 80202


Kristie Lyngstad

South Dakota Public Utilities Commission

WEEKLY FILINGS

For the Period of December 2, 1999 through December 8, 1999

If you need a complete copy of a filing faxed, overnight expressed, or mailed to you, please contact Delaine Kolbo within five business days of this filing.

Phone: 605-773-3705 Fax: 605-773-3809

CONSUMER COMPLAINTS

CT99-067 In the Matter of the Complaint filed by Robert J. Ries and Treva Jean M. Ries, Watertown, South Dakota, against OLS, Inc. Regarding Switching Telecommunications Services Through Deceptive Tactics.

The Complainants claim that they were contacted by telephone to consolidate their billing. As a result of the call, their long distance service was switched to OLS, Inc. The Complainants want telephone companies to "have everything in writing before anything could change."

Staff Analyst: Leni Healy
Staff Attorney: Karen Cremer
Date Filed: 12/02/99
Intervention Deadline: NA

CT99-068 In the Matter of the Complaint filed by Mrs. Robert Binfet, Aberdeen, South Dakota, against OLS, Inc. Regarding Switching Telecommunications Services Through Deceptive Tactics.

The Complainant claims that she received a call from a telemarketer representing her local phone company. As a result of this call, the Complainant's long distance service was switched. The Complainant is seeking to have the charges removed and a fine assessed.

Staff Analyst: Leni Healy
Staff Attorney: Karen Cremer
Date Filed: 12/08/99
Intervention Date: NA

CT99-069 In the Matter of the Complaint filed by Sandy Curran, Sisseton, South Dakota, against OLS, Inc. Regarding Switching Telecommunications Services Through Deceptive Tactics.

The Complainant indicates that as a result of a sales call, she switched her long distance service. The rates and fees which appeared on her billing were not the rates and fees promised.

Staff Analyst: Leni Healy
Staff Attorney: Karen Cremer
Date Filed: 12/08/99
Intervention Date: NA

TELECOMMUNICATIONS

TC99-112 In the Matter of the Joint Application of U S WEST Communications, Inc. and Sully Buttes Telephone Cooperative, Inc. and Venture Communications, Inc. Regarding the Sale by U S WEST of its Sisseton Telephone Exchange to Sully Buttes Telephone Cooperative, Inc. and Venture Communications, Inc.

On July 23, 1999, U S WEST Communications, Inc. (U S WEST) and Venture Communications, Inc. (VCI) a wholly-owned subsidiary of Sully Buttes Telephone Cooperative, Inc. (SBTC) entered into an Agreement for the sale and purchase of the Sisseton Exchange. On December 2, 1999, the Commission received a joint application from U S West and VIC/SBTC for approval of the sale.

Staff Analyst: Keith Senger
Staff Attorney: Karen Cremer
Dated Filed: 12/02/99
Intervention Deadline: 12/23/99

TC99-113 In the Matter of the Petition of McLeodUSA Telecommunications Services, Inc. for a Declaratory Ruling on Whether the Discontinuance of the Retail Sale of Voice Messaging Service by U S WEST Communications, Inc. to McLeodUSA Violates SDCL 49-31-11.

The petition by McLeodUSA as summarized states: U S WEST Communications (U S WEST) offers Voice Messaging Service (VMS) pursuant to its South Dakota Exchange and Network Services Catalog. There is nothing in the catalog that restricts the selling of VMS to residential or business customers either to individual customers, in bulk or in large numbers, or for any customer to then resell to others. McLeodUSA, as a service to its customers, buys VMS from U S WEST under the terms and conditions of U S WEST's catalog and at the retail prices published by U S WEST in the catalog. McLeodUSA then resells the VMS to its customers at the same rate, and under the same terms and conditions, as in the catalog. The purchase and resale of VMS is not done pursuant to a resale agreement or pursuant to any wholesale discount required by the Telecommunications Act of 1996. On September 22, 1999, McLeodUSA

became aware for the first time that the sale of VMS by U S WEST in South Dakota to McLeodUSA would be discontinued. The only reason stated for this action by U S WEST is that it is not required to sell VMS for resale by companies. Despite attempts to have the decision concerning the retail provisioning of VMS to McLeodUSA changed, U S WEST is now prepared to disconnect over 400 VMS customers in South Dakota because they are also customers of a competitor, McLeodUSA. McLeodUSA may be successful in keeping these customers on a VMS platform provided by McLeodUSA or another vendor, but at a cost for local transport, much of which is controlled by and must be purchased from U S WEST. There is no good or justifiable business reason to single out the purchase at retail of VMS by a competitor, who then resells the service, as a target for making the service not available as described in the catalog. This is just another attempt by U S WEST to inhibit competition in its South Dakota local exchange market in violation of explicit state law prohibiting such discriminatory conduct. The discontinuance of the retail sale of VMS by U S WEST to McLeodUSA for purposes of resale is an unjust and unreasonably discriminatory action by U S WEST in violation of SDCL 49-31-11.

Staff Analyst: Harlan Best
Staff Attorney: Camron Hoseck
Date Filed: 12/02/99
Intervention Deadline:

TC99-114 In the Matter of the Petition of Dakota Telecom, Inc. to Amend its Certificate of Authority to Allow Dakota Telecom, Inc. to Provide Service to the Jefferson, South Dakota Exchange.

On October 22, 1996, Dakota Telecom, Inc. (DTI) was granted a Certificate of Authority to provide telecommunications services, including local exchange services, throughout the State of South Dakota. This grant was subject to the Commission's restriction with respect to rural telephone companies. DTI is requesting that the Commission amend its previous Order granting DTI its certificate and grant DTI the authority to provide service to the entire exchange of Jefferson, South Dakota, an exchange currently served by Long Lines, Inc. d/b/a Jefferson Telephone company, a rural telephone company as that term is defined in Federal and State law.

Staff Analyst: Heather Forney
Staff Attorney: Camron Hoseck
Dated Filed: 12/06/99
Intervention Deadline: 12/24/99

TC99-115 In the Matter of the Application of One Tel Inc. for a Certificate of Authority to Provide Telecommunications Services in South Dakota.

One Tel Inc. seeks a Certificate of Authority to provide resold interexchange dial around telecommunication services. One Tel intends to provide services through South Dakota to business and residential end-users.

Staff Analyst: Keith Senger
Staff Attorney: Camron Hoseck
Date Filed: 12/08/99
Intervention Date: 12/23/99

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You may subscribe or unsubscribe to the PUC mailing lists at <http://www.state.sd.us/puc/>**



South Dakota Public Utilities Commission



State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070

VIA FACSIMILE

December 22, 1999

Barbara E. Berkenpas
McLeod Telecommunications Services, Inc.
29705 453rd Avenue
P.O. Box 66
Irene, SD 57037-0066

RE: Docket TC99-113, Petition for Declaratory Ruling

Dear Ms. Berkenpas:

The Commission requests the following additional information regarding your Petition for Declaratory Ruling:

1. Did U S WEST disconnect all of your VMS customers in South Dakota on 11/30/99? In your Petition, paragraph 2(e), you state that "U S WEST is now prepared to disconnect over 400 VMS customers in South Dakota" But in the attached affidavit it is stated that "U S WEST chose to move forward with removing the VMS service from all McLeod USA South Dakota customers effective 11/30/99."

2. In the attached affidavit, reference is made to a "60 business day clock." Is the "60 business day clock" based on a written policy, agreement, or tariff?

If possible, the Commission would like a response prior to its December 28, 1999, meeting.

Sincerely,

Rolayne Ailts Wiest

ROLAYNE AILTS WIEST
General Counsel

cc: Thomas J. Welk
Alex Duarte
Camron Hoseck

Capitol Office
Telephone (605)773-3201
FAX (605)773-3809

Transportation/
Warehouse Division
Telephone (605)773-5280
FAX (605)773-3225

Consumer Hotline
1-800-332-1782

TTY Through
Relay South Dakota
1-800-877-1113

Internet Website
www.puc.state.sd.us/puc/

Jim Burg
Chairman
Pam Nelson
Vice-Chairman
Laska Schoenfelder
Commissioner

William Bullard Jr.
Executive Director

Harlan Best
Martin C. Bettmann
Sue Cichos
Karen E. Cremer
Michele M. Farris
Marlette Fischbach
Heather K. Forney
Shirleen Fugitt
Mary Giddings
Lewis Hammond
Leni Healy
Camron Hoseck
Lisa Hull
Dave Jacobson
Katie Johnson
Bob Knadie
Delaine Kolbo
Charlene Lund
Terry Norum
Gregory A. Rislov
Keith Senger
Rolayne Ailts Wiest

START

OF

RETAKE



South Dakota Public Utilities Commission



State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070

VIA FACSIMILE

December 22, 1999

Barbara E. Berkenpas
McLeod Telecommunications Services, Inc.
29705 453rd Avenue
P.O. Box 66
Irene, SD 57037-0066

RE: Docket TC99-113, Petition for Declaratory Ruling

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Sincerely,

Rolayne Ailts Wiest

ROLAYNE AILTS WIEST
General Counsel

cc: Thomas J. Welk
Alex Duarte
Camron Hoseck

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Delaine Kolbo
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Gregory A. Rislov
Keith Senger
Rolayne Ailts Wiest

McLeodUSA®

VIA FACSIMILE

December 22, 1999

Rolayne Ailts Wiest
General Counsel
South Dakota Public Utilities Commission
State Capitol Building
500 East Capitol Avenue
Pierre, SD 57501-5070

Dear Ms. Wiest:

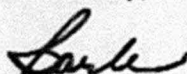
This letter is in response to the questions you presented in the letter I received via facsimile earlier today.

When we were faced with the concern that U S WEST would be disconnecting all of McLeodUSA's VMS customers in South Dakota on 11/30/99, we moved our customers to an emergency mailbox system. As far as we can determine, all customers with U S WEST were disconnected by U S WEST.

Also, as far as we can determine, there are no written policies or tariffs that make reference to any 60 business day notice.

I hope this answers your questions. If you have any further questions or concerns, I'll be glad to respond.

Sincerely,



Barbara E. Berkenpas
McLeod Telecommunications Services, Inc.
29705 453rd Avenue
PO Box 66
Irene, SD 57037-0066
605-263-7213

DTG

END

OF

RETAKE

BOYCE, MURPHY, McDOWELL & GREENFIELD, L.L.P.
ATTORNEYS AT LAW

Jeremiah D. Murphy
Russell R. Greenfield
David J. Vickers
Gary J. Pashby
Vance R.C. Goldammer
Thomas J. Welk
Terry N. Prendergast
James E. McMahon
Michael S. McKnight
Gregg S. Greenfield
Roger A. Sudbeck

101 North Phillips Avenue, Suite 600
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Sioux Falls, South Dakota 57117-5015

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Facsimile 605 334-0618 tjwelk@boycemurphy.com

Tamara A. Wilka
Carolyn A. Thompson
Lisa Hansen-Marro
Jeffrey C. Clapper

Of Counsel
John R. McDowell

J.W. Boyce (1884-1915)
John S. Murphy (1924-1966)

RECEIVED

DEC 27 1999

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

December 22, 1999

William Bullard, Jr., Executive Director
S.D. Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

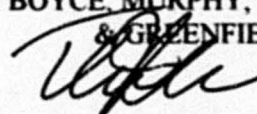
Re: In the Matter of the Petition of McLeodUSA Telecommunications Services, Inc. for a Declaratory Ruling on Whether the Discontinuance of the Retail Sale of Voice Messaging Service by U S WEST Communications, Inc. to McLeodUSA Violates SDCL 49-31-11. (Docket No. TC99-113)
Our File No. 2104-051

Dear Bill:

Please find enclosed for filing the original and ten (10) copies of the Petition to Intervene of U S WEST Communications, Inc.

Sincerely yours,

BOYCE, MURPHY, MCDOWELL
& GREENFIELD, L.L.P.



Thomas J. Welk

TJW/vjj
Enclosures

cc: William P. Heaston/Barbara E. Berkenpas
Alex Duarte
Dennis Warner
Jon Lehner

DEC 27 1999

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTASOUTH DAKOTA PUBLIC
UTILITIES COMMISSION


IN THE MATTER OF THE PETITION OF
McLEODUSA TELECOMMUNICATIONS
SERVICES, INC. FOR A DECLARATORY
RULING ON WHETHER THE
DISCONTINUANCE OF THE RETAIL SALE OF
VOICE MESSAGING SERVICE BY U S WEST
COMMUNICATIONS, INC. TO McLEOD USA
VIOLATES SDCL 49-31-11.

Docket No. TC99-113

PETITION TO INTERVENE OF
U S WEST COMMUNICATIONS, INC.

U S WEST Communications, Inc. ("U S WEST"), through the undersigned attorneys, pursuant to SDCL 1-26-17.1 and ARSD 20.10:01:15.03 petitions to intervene as a party in this matter. U S WEST is directly and immediately affected by the Commission's ruling in this matter in that the voice messaging services at issue are those of U S WEST. U S WEST opposes the ruling sought by McLeodUSA Telecommunications Services, Inc. ("Petitioner") that discontinuance of the retail sale of voice messaging service ("VMS") by U S WEST to Petitioner is an unjust and unreasonably discriminatory action and in violation of SDCL 49-31-11. Moreover, U S WEST requests that a factual record be developed regarding the provisioning and regulatory actions as to VMS before such declaratory ruling would be issued.

Dated this 22nd day of December, 1999.



Thomas J. Welk
BOYCE, MURPHY, MCDOWELL & GREENFIELD
P.O. Box 5015
Sioux Falls, SD 57117-5015
Telephone: (605) 336-2424Alex M. Duarte
U S WEST Communications, Inc.
1801 California Street #5100
Denver, CO 80202
Telephone: (303) 672-5871
Attorneys for U S WEST Communications, Inc.

CERTIFICATE OF SERVICE

I, Thomas J. Welk, do hereby certify that I am a member of the law firm of Boyce, Murphy, McDowell & Greenfield, and on the 22nd day of December, 1999, a true and correct copy of the Petition to Intervene of U S WEST Communications, Inc. was served by first class U S mail, postage prepaid on the following:

William P. Heaston
Barbara E. Berkenpas
McLeodUSA Telecommunications Services, Inc.
29705 453rd Avenue
P.O. Box 66
Irene, SD 57037-0066

A handwritten signature in black ink, appearing to read 'T. Welk', is written over a horizontal line.

Thomas J. Welk

STATE OF SOUTH DAKOTA)
COUNTY OF HUGHES)

IN CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE PETITION OF)
MCLEODUSA TELECOMMUNICATIONS)
SERVICES, INC. FOR A DECLARATORY)
RULING ON WHETHER THE)
DISCONTINUANCE OF THE RETAIL SALE)
OF VOICE MESSAGING SERVICE BY)
U S WEST COMMUNICATIONS, INC. TO)
MCLEODUSA VIOLATES SDCL 49-31-11.)

MOTION FOR ADMISSION
BY RESIDENT
PRACTICING ATTORNEY

TC99-113

RECEIVED

DEC 30 1999

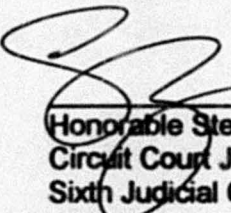
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

It is hereby

ORDERED that the Motion for Admission for William P. Heaston, a non-resident attorney, to appear on behalf of Dakota Telecommunications Group, Inc. and Dakota Telecom, Inc., before the Public Utilities Commission and this Court relating to this matter is granted.

Dated: 12-27, 1999.

BY THE COURT:


Honorable Steven L. Zinter
Circuit Court Judge
Sixth Judicial Circuit

STATE OF SOUTH DAKOTA
CIRCUIT COURT, HUGHES CO.
FILED

ATTEST:

Mary L. Erickson
Clerk of Courts

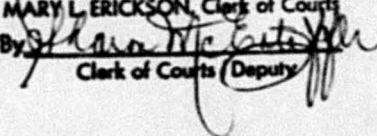
BY: 
Deputy

(SEAL)

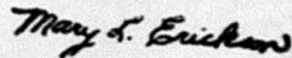
State of South Dakota } ss
County of Hughes }

I hereby certify that the foregoing
instrument is a true and correct
copy of the original on file in my
office.

Dated this 27th day of Dec. 1999.
MARY L. ERICKSON, Clerk of Courts

By: 
Clerk of Courts (Deputy)

DEC 27 1999


By: _____ Deputy

BOYCE, MURPHY, McDOWELL & GREENFIELD, L.L.P.

ATTORNEYS AT LAW

Jeremiah D. Murphy
Russell R. Greenfield
David J. Vickers
Gary J. Pashby
Vance R.C. Goldammer
Thomas J. Welk
Terry N. Prendergast
James E. McMahon
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Gongg S. Greenfield
Roger A. Sudbeck

101 North Phillips Avenue, Suite 600
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Sioux Falls, South Dakota 57117-5015

Telephone 605 336-2424 Direct Dial 605-731-0208
Facsimile 605 334-0618 tjwelk@boycemurphy.com

Tamara A. Wilka
Carolyn A. Thompson
Lisa Hansen Mamo
Jeffrey C. Clapper

Of Counsel
John R. McDowell

J.W. Boyce (1884-1915)
John S. Murphy (1924-1966)

December 30, 1999

RECEIVED

JAN 03 2000

William Bullard, Jr., Executive Director
S.D. Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

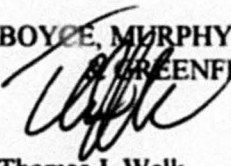
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Our File No. 2104-051

Dear Bill:

Please find enclosed for filing a copy of the Order Admitting Non-Resident Attorney Alex Duarte in this matter.

Sincerely yours,

BOYCE, MURPHY, MCDOWELL
& GREENFIELD, L.L.P.


Thomas J. Welk

TJW/vjj
Enclosures

cc: William P. Heaston/Barbara E. Berkenpas
Alex Duarte
Dennis Warner
Jon Lehner

RECEIVED

RECEIVED

STATE OF SOUTH DAKOTA)

JAN 03 2000

IN CIRCUIT COURT

DEC 30 1999

COUNTY OF HUGHES)

ss

SOUTH DAKOTA PUBLIC SIXTH JUDICIAL DISTRICT
UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE PETITION OF McLEOD
USA TELECOMMUNICATIONS SERVICES, INC.
FOR A DECLARATORY RULING ON WHETHER
THE DISCONTINUANCE OF THE RETAIL SALE
OF VOICE MESSAGING SERVICE BY U S WEST
COMMUNICATIONS, INC. TO McLEOD USA
VIOLATES SDCL 49-31-11.

Docket No. TC99-113

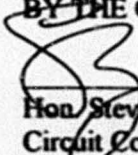
ORDER ADMITTING
NON-RESIDENT ATTORNEY
ALEX M. DUARTE

It is hereby

ORDERED that the Motion for Admission for Alex M. Duarte, a non-resident attorney,
to appear on behalf of U S WEST Communications, Inc. before the Public Utilities Commission
for the State of South Dakota relating to this matter is granted.

Dated this 27, day of Dec, 1999.

BY THE COURT:


Hon. Steven L. Zinter
Circuit Court Judge
Sixth Judicial District

ATTEST:

Mary Erickson, Clerk


By 

Deputy

(SEAL)

STATE OF SOUTH DAKOTA
CIRCUIT COURT, HUGHES CO.
FILED

DEC 27 1999

Mary L. Erickson CLERK
 Deputy

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE PETITION OF) MCLEODUSA TELECOMMUNICATIONS) SERVICES, INC. FOR A DECLARATORY) RULING ON WHETHER THE) DISCONTINUANCE OF THE RETAIL SALE OF) VOICE MESSAGING SERVICE BY U S WEST) COMMUNICATIONS, INC. TO MCLEODUSA) VIOLATES SDCL 49-31-11)	ORDER GRANTING INTERVENTION AND SETTING A PROCEDURAL SCHEDULE TC99-113
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------

On December 2, 1999, the South Dakota Public Utilities Commission (Commission) received a Petition for Declaratory Ruling from McLeodUSA Telecommunications Services, Inc. (McLeod).

Notice of the filing was given in the Commission's fax filing of December 8, 1999. This matter was noticed for the Commission's December 28, 1999, regularly scheduled meeting for purposes of determining the procedural schedule. On December 27, 1999, a Petition to Intervene was filed by U S WEST Communications, Inc. (U S WEST). At its duly scheduled December 28, 1999, meeting, the Commission considered this matter. A discussion was held with counsel for the respective parties who represented that they were attempting to reach a stipulation of facts and would file briefs in the matter without the necessity of an evidentiary hearing if such a stipulation is reached. Intervention by U S WEST was also considered.

The Commission has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-31.

Based upon the representations of counsel, it is

ORDERED, that the following procedural schedule shall be followed:

A stipulation of facts shall be filed with the Commission by January 12, 2000.

McLeod shall file its brief with the Commission by January 14, 2000.

U S WEST shall file its brief with the Commission by January 28, 2000.

IT IS FURTHER ORDERED, that good cause having been shown, U S WEST's Petition for Intervention shall be granted.

Dated at Pierre, South Dakota, this 12th day of January, 2000.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

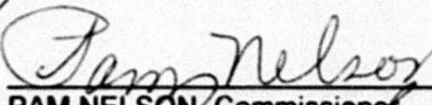
By: Alaine Kalko

Date: 1/13/00

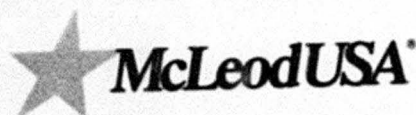
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:


JAMES A. BURG, Chairman


PAM NELSON, Commissioner


LASKA SCHOENFELDER, Commissioner



RECEIVED

JAN 13 2000

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

VIA FACSIMILE AND OVERNIGHT MAIL

January 12, 2000

William Bullard, Jr.
Executive Director
South Dakota Public Utilities Commission
Capitol Building, 1st Floor
500 East Capitol Avenue
Pierre, SD 57501-5070

FAX Received JAN 12 2000

RE: Stipulation of Facts – Docket No. TC99-113

Dear Mr. Bullard,

Enclosed is the original and 10 copies of the Stipulation of Facts which the parties agreed to file in this docket. If you have any questions, please give me a call.

Sincerely,

William P. Heaston
Associate General Counsel
P.O. Box 66
Irene, SD 57037
Telephone: (605) 263-7212
Fax: (605) 263-3844
Email: wpheast@McLeodUSA.com

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

RECEIVED

JAN 13 2000

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

**In the Matter of the Petition of McLeodUSA)
Telecommunications Services, Inc., for a)
Declaratory Ruling on Whether the Discon-)
tinuance of the Retail Sale of Voice Messaging)
Service by U S WEST Communications, Inc.,)
to McLeodUSA Violates SDCL 49-31-11.)**

TC99-113

FAX Received JAN 12 2000

STIPULATION OF FACTS

McLeodUSA Telecommunications Services, Inc. (McLeodUSA) and U S WEST Communications, Inc.'s (U S WEST), by and between undersigned counsel, hereby stipulate and agree as follows:

1. U S WEST Voice Messaging Service (VMS) was first introduced in South Dakota on October 1, 1992 in the Sioux Falls and Rapid City central offices. The service was expanded to the Northern Black Hills, Pierre and Ft. Pierre in 1999. U S WEST has invested more than \$1.6 million in capital and more than \$1.3 million in expense in deploying VMS in South Dakota and currently has VMS available to over 76% of its retail residential and business access lines in the state. Additionally, U S WEST has spent more than \$500,000 in research in its 14-state regional market to determine the VMS configurations most attractive to U S WEST customers. Currently, U S WEST uses Octel equipment from Lucent to provide VMS in South Dakota and has deployed two Octel platforms in the Sioux Falls market and one in the Rapid City market.
2. The South Dakota Public Utilities Commission (Commission) has classified VMS as a fully competitive service.
3. Several VMS platforms such as Octel, Converse, Cisco-Amteva, are currently available from vendors to providers of telecommunications services in South Dakota, such as McLeodUSA, which would enable those providers to offer VMS in competition with U S WEST. McLeodUSA and other competitive local exchange service providers utilize alternative platforms to provide their own VMS service in South Dakota. Because U S WEST is the incumbent, facilities-based, local exchange service provider in South Dakota, the competitive providers, including McLeodUSA, use U S WEST's services such as Message Delivery Service-Interoffice (MDSI) or other dedicated services to provide connectivity between the local customer and the alternative VMS platform. U S WEST has not denied MDSI or other dedicated service connectivity to McLeodUSA for VMS.

4. U S WEST and McLeodUSA have an Interconnection Agreement (Agreement), which permits collocation of a McLeodUSA VMS platform in U S WEST central offices, and which was approved by the Commission on July 23, 1999. The Agreement is on file with the Commission as required by federal law and the terms and conditions of that Agreement are incorporated by reference in this Stipulation.


5. McLeodUSA purchased VMS from U S WEST at retail prices from U S WEST's South Dakota Local Exchange and Network Services Catalog. The relevant Catalog pages are attached as Exhibit A to this Stipulation and the language of those pages is incorporated as a part of this Stipulation.

6. VMS was purchased by McLeodUSA to be used by McLeodUSA customers who have local exchange service through the McLeodUSA resale of U S WEST's Centrex service in South Dakota. McLeodUSA does purchase Centrex service at a wholesale discount for resale in U S WEST's local exchange markets.

7. On July 7, 1999, in response to a question from McLeodUSA, U S WEST stated in an email that U S WEST has consistently held the position that Voice Mail is an enhanced service, not a telecommunications service required for resale under the Telecommunications Act of 1996, and that in South Dakota the Commission has agreed with that position. On or about September 22, 1999, McLeodUSA was specifically notified that VMS would be discontinued in South Dakota when it received an email from U S WEST that service would be denied starting that day. With the assistance of the U S WEST account team, the disconnection of service did not occur at that time.

8. McLeodUSA had approximately 450 customers using U S WEST's VMS product in South Dakota in 1999. U S WEST refused to grandfather existing McLeodUSA VMS resale customers in South Dakota. As of November 30, 1999, all McLeodUSA customers for U S WEST's VMS were disconnected. McLeodUSA now provides VMS to these customers through an alternative platform.

Stipulated and agreed to on the date indicated below:



William P. Heaston
Associate General Counsel
McLeodUSA Telecommunications
Services, Inc.
January 12, 2000



Thomas J. Welk
Alex M. Duarte
U S WEST Communications, Inc
Its Attorneys
January 12, 2000

EXHIBIT A

U S WEST COMMUNICATIONS, INC.

Exchange and Network Services Catalog

SECTION 10

Page 23

Release 6

State of South Dakota

Issued: 2-20-97

Effective: 2-24-97

10. MISCELLANEOUS SERVICE OFFERINGS

10.12 VOICE MESSAGING SERVICE

10.12.1 RESIDENCE VOICE MESSAGING SERVICE

(T)

A. Description

U S WEST Residence Voice Messaging Service (VMS) provides an audio mailbox to record, store, retrieve, review, save and to handle audio messages for residence customers. The service will greet incoming callers with a personal or a standard greeting in either English or Spanish. It provides audio prompts and personal security codes for customers and users of the service. Customers can send, reply and copy/forward messages to others on the same local messaging system as well as send messages to others on the same messaging system without having to dial their telephone numbers/mailbox numbers one at a time. Customers can access the service from any tone signaling telephone. Listed below are the types of VMS available to residence customers:

(T)

1. Mailboxes

Call Forwarding-Busy Line/Don't Answer with Message Waiting Indication

This capability is provided by equipping a customer's telephone service with Call Forwarding-Busy Line/Don't Answer (CFBDA) and with Message Waiting Indication (MWI) in addition to a voice messaging mailbox. CFBDA automatically forwards incoming calls to the mailbox when the customer's telephone line is busy or does not answer. MWI provides a stutter dial tone when messages are waiting.

Call Forwarding-Busy Line/Don't Answer with Message Waiting Indication - Simultaneous (CFBDA/MWI-S)

This capability is provided by equipping a customer's telephone service with CFBDA and with MWI in addition to a voice messaging mailbox. CFBDA automatically forwards incoming calls to the mailbox when the customer's telephone line is busy or does not answer. CFBDA/MWI-S provides a simultaneous stutter dial tone and light indicator when messages are waiting.

Mailbox Only

This capability is provided by equipping a customer's telephone service with a voice messaging mailbox only. It does not include any other service or feature. Customers subscribing to Mailbox Only must have their lines equipped with a Call Forwarding feature at rates and charges specified elsewhere. In addition, customers wishing to receive notification of new messages waiting to be retrieved must have their lines equipped with Message Waiting Indication at rates and charges specified elsewhere.

NOTICE

THE INFORMATION CONTAINED IN THIS DOCUMENT IS SUBJECT TO CHANGE.

U S WEST COMMUNICATIONS, INC.

Exchange and Network Services Catalog

SECTION 10

Page 23.1

Release 4

State of South Dakota

Issued: 4-7-98

Effective: 4-9-98

10. MISCELLANEOUS SERVICE OFFERINGS

10.12 VOICE MESSAGING SERVICE

10.12.1 RESIDENCE VOICE MESSAGING SERVICE (Cont'd)

2. Optional Features

Message Notification

This option provides for the delivery or notification of new messages to a different location other than the customer's mailbox number. The customer has the option of sending messages to another telephone number or pager. The customer will have the ability to turn the notification on or off.

Additional Message Capacity

This option allows customers to have additional capacity added to their mailbox which will allow them to save either an additional 50 or 100 messages for a maximum of 100 days. Customers who subscribe to Extension Mailbox may only purchase an additional 50 messages.

Extension Mailbox

This option gives the customer three reduced function mailboxes, in addition to their personal mailbox. Messages can be left for any of these extension mailboxes by pressing certain digits on a tone signaling telephone. Each of the extension mailboxes can have a personal greeting which is played after the caller makes a selection. Messages left in an extension mailbox can only be retrieved using the extension mailbox's security code.

(C)
(C)

(N)

(N)

B. Terms and Conditions

1. VMS will be provided 24 hours per day, 7 days per week.
2. The Company may disconnect without advance notice, any VMS which is used in such a manner as to prevent, obstruct, delay or otherwise interfere with the service of other users.
3. The Company, at its discretion, may change the customer interface such as the recorded prompts and directions, the length of time available for leaving messages, the number of messages which may be left and other aspects of the service without prior notice to the customer.

(M)

(M) Material moved to Page 23.2.

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U S WEST COMMUNICATIONS, INC.
Exchange and Network
Services Catalog

SECTION 10

Page 23.2

Release 1

State of South Dakota
Issued: 4-7-98

Effective: 4-9-98

10. MISCELLANEOUS SERVICE OFFERINGS

10.12 VOICE MESSAGING SERVICE

10.12.1 RESIDENCE VOICE MESSAGING SERVICE

B. Terms and Conditions (Cont'd)

4. Customers subscribing to *MARKET EXPANSION LINE* may subscribe to Mailbox Only. These customers would not subscribe to another Call Forwarding feature nor would Message Waiting Indication be necessary. (M)
5. The Company may apply, at no charge, additional features for the purpose of enhancing service. Easy Access, removal of the audio logo and the restart function are examples of these features.
6. Customers may save up to 35 messages for up to 100 days. Additional message capacity may be purchased as specified in C., following. (M)

C. Rates And Charges (M1)

1. The rates and charges for VMS with CFBDA/MWI or CFBDA/MWI-S include the provision of Call Forwarding-Busy Line/Don't Answer and Message Waiting Indication.
2. Except as otherwise indicated, the rates and charges for VMS are in addition to all rates and charges for the associated service.
3. When, at the request of the customer, changes are made to existing VMS, the nonrecurring charge shall apply. (M1)

(M) Material moved from Page 23.1.

(M1) Material moved from Page 24.

NOTICE

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U S WEST COMMUNICATIONS, INC.

Exchange and Network Services Catalog

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State of South Dakota

Issued: 4-7-98

Effective: 4-9-98

10. MISCELLANEOUS SERVICE OFFERINGS

10.12 VOICE MESSAGING SERVICE

10.12.1 RESIDENCE VOICE MESSAGING SERVICE

C. Rates and Charges(Cont'd)

- (M)
4. Changes in the ringing cycle associated with the Call Forwarding Busy Line/Don't Answer feature may be charged for in accordance with the charges for that feature
 5. The rates and charges may not apply to customers who subscribe to VMS during the term of a Voice Messaging promotion. A promotion may be in the form of a coupon offer. The periods and provisions of such promotion will be determined by the Company.
 6. The rates and charges are as follows:

	USOC	NONRECURRING CHARGE	MONTHLY RATE	
• Mailboxes, each line arranged[1]				
- With CFBDA/MWI	VMJXA	\$6.00	\$6.95	
- Discounted[2]	V4DXA	-	4.95	
- With CFBDA/MWI-S	VMJXB	6.00	6.95	
- Discounted[2]	V4DXB	-	4.95	
- Mailbox only	VMJXX	6.00	6.95	
- Discounted[2]	V4DXX	-	4.95	
• Optional Features, each line arranged[3]				
- Additional Message Capacity				
- 50 Messages	VMC1X	-	3.00	
- 100 Messages[4]	VMC2X	-	6.00	(T)
- Extension Mailbox	VBS	-	2.00	(N)
- Discounted[2]	V5D	-	1.00	(N)
- Message Notification	VFN	-	3.00	
- Discounted[2]	V6D	-	2.00	
- Spanish	S8V	-	-	

[1] The nonrecurring charge does not apply when changing from one type of Voice Messaging to another.

[2] Discounted rate applies when this mailbox is added as a part of *CUSTOMCHOICE*.

[3] The nonrecurring charge applies only when ordered subsequent to the installation of service.

[4] This feature is not available with Extension Mailbox.

(M) Material moved to Page 23.2.

(N)

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U S WEST COMMUNICATIONS, INC.
Exchange and Network
Services Catalog

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Release 4

Effective: 1-1-97

State of South Dakota
Issued: 12-30-96

10. MISCELLANEOUS SERVICE OFFERINGS

10.12 VOICE MESSAGING SERVICE (Cont'd)

10.12.2 BUSINESS VOICE MESSAGING SERVICE

(T)

A. Description

1. *U S WEST* Business Voice Messaging Service (BVMS) can answer incoming calls, placed to the customer's telephone line, when the called number is busy or if the called number is not answered. The service will greet incoming callers with a personal or a standard greeting in either English or Spanish. It then receives and saves the caller's messages for review by the customer. Customers can retrieve messages left for them from any tone signaling telephone.

(T)

2. Mailboxes

The following mailbox is available with BVMS. This mailbox is provided on a stand alone basis, in association with one or more additional mailboxes, or with one or more options.

(T)

(T)

Voice Mail

(C)

This mailbox answers incoming calls placed to the customer when their telephone number is busy or if the call is not answered. The Voice Mail mailbox can greet callers with a personal or standard greeting. The mailbox receives and saves the caller's message for review by the customer. The basic features of the Voice Mail mailbox include route to other number, personal and extended absence greeting, security code, receiving and disposing of messages, pause, skip-forward, skip-backwards and replay of messages. Customers can also send, reply and copy/forward messages to others on the same local messaging system, as well as send messages to others on the same messaging system without having to dial their telephone numbers/mailbox numbers one at a time. Customers can retrieve messages left for them from any tone signaling telephone.

(C)

(D)

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U S WEST COMMUNICATIONS, INC.
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State of South Dakota
Issued: 7-10-98

Effective: 7-13-98

10. MISCELLANEOUS SERVICE OFFERINGS

10.12 VOICE MESSAGING SERVICE

10.12.2 BUSINESS VOICE MESSAGING SERVICE

A. Description (Cont'd)

3. Optional Feature Mailboxes

Call Routing

This feature is a front-end call routing service, using menu selections, that helps callers make quick connections to a particular customer's or department's mailbox by pressing single digits on a tone signaling telephone. This feature is used with two or more Voice Mail mailboxes. Calls placed to a call router may be directed to any other call router. (C)

This feature is not technically compatible with an extended absence greeting.

Call Routing to Number

This feature is a front-end call routing service, using menu selections, that helps touch-tone callers make quick connections to a particular customer's or department's Voice Mail mailbox, or another local or 800/800 type telephone number. Below are the potential options a caller will have once they are in the call routing mailbox:

- Route to a Voice Mail mailbox, leave a message or press "0" and route to the customer's attendant, and/or,
- Route to another telephone number. If this number is busy, isn't answered, or is answered by some form of telephone answering, the caller will not be routed back to the original routing mailbox.

Calls routed via this service may route to numbers within the same local calling area or 800/800 type numbers. The customer has the option of selecting a default option for calls placed from rotary dial telephones. This feature must be used in conjunction with two or more Voice Mail mailboxes which are billed to the same telephone number.

This feature is not technically compatible with an extended absence greeting.

NOTICE

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U S WEST COMMUNICATIONS, INC.

Exchange and Network Services Catalog

SECTION 10

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Issued: 12-30-96

Effective: 1-1-97

10. MISCELLANEOUS SERVICE OFFERINGS

10.12 VOICE MESSAGING SERVICE

10.12.2 BUSINESS VOICE MESSAGING SERVICE

A.3. (Cont'd)

Extension Mailbox

This option gives the customer three reduced function mailboxes, in addition to their personal mailbox. Messages can be left for any of these Extension Mailboxes by pressing certain digits on a tone signaling telephone. Each of the Extension Mailboxes can have a personal greeting which is played after the caller makes a selection. Messages left in an Extension Mailbox can only be retrieved using the individual Extension Mailboxes' security code. This option is not technically compatible with Scheduled Greetings or an extended absence greeting.

4. Optional Features

Additional Message Capacity

This option allows customers to have additional capacity added to their mailbox which will allow them to save either an additional 50 or 100 messages for a maximum of 100 days. Additional message capacity of 100 messages is not compatible with Extension mailboxes.

Call Router Traffic Study (CRTS)

A CRTS is a custom report that identifies, by call router, the number of calls routed to each menu selection. CRTS is available to customers subscribing to Call Routing and/or Call Routing to Number feature(s).

Data is available only on a monthly basis, i.e., the report period starts on the first day of a month and ends on the last day of that month. Studies may be requested for one or more months. Rotary calls will be included in the return to other number count.

(M) Material moved from Page 28.

(M1) Material moved to Page 28.

(M2) Material moved to Page 26.

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(T)

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(T)

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(C-M)

(M1)

(D)

(C)

(C)

(T)

(T)

(M2)

U S WEST COMMUNICATIONS, INC.
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Issued: 12-30-96

Effective: 1-1-97

10. MISCELLANEOUS SERVICE OFFERINGS

10.12 VOICE MESSAGING SERVICE

10.12.2 BUSINESS VOICE MESSAGING SERVICE

A.4. (Cont'd)

Message Notification

This option provides for the delivery or notification of new messages to a different location other than the customer's mailbox number. The customer has the option of sending notification or messages to another number in their BVMS system, or notification only to a local telephone number or pager. A notification schedule may be established to call the customer immediately when new urgent messages are left in the customer's mailbox or when any message is left. The customer will have the ability to turn the notification on or off.

Scheduled Greetings

This option offers the customer the ability to have two separate greetings that would play at different times during the workday. These "open" and "closed" greeting times would be controlled by the customer. The customer can also designate that either of these greetings be played at different times during the weekend.

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(M1)

(M1)

(M2)

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(M3)

(M) Material moved to Page 26.

(M1) Material moved from Page 26.

(M2) Material moved from Page 27.

(M3) Material moved to Page 27.

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U S WEST COMMUNICATIONS, INC.
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Release 4

State of South Dakota
Issued: 3-31-98

Effective: 5-5-98

10. MISCELLANEOUS SERVICE OFFERINGS

10.12 VOICE MESSAGING SERVICE

10.12.2 BUSINESS VOICE MESSAGING SERVICE (Cont'd)

(T)

B. Terms and Conditions

1. The minimum service period for BVMS is one month.
2. BVMS will be provided 24 hours per day, 7 days per week.
3. BVMS will be provided where technically and/or economically feasible and where sufficient demand exists to warrant the provision of the service.
4. Customers subscribing to BVMS should have their lines equipped with Call Forwarding - Variable, Call Forwarding Busy Line, Call Forwarding Don't Answer, Call Forwarding Busy Line/Don't Answer, or Remote Access Forwarding/Scheduled Forwarding in order to transport their calls to the voice response unit. Customers wishing to receive notification of messages waiting to be retrieved must have their lines equipped with message waiting indication.
5. The Company does not guarantee this service. However, in the event of an interruption to the service which is not due to the negligence or willful act of the customer or the premises facilities beyond the Demarcation Point, a pro rata adjustment of the monthly charge for the service will be allowed. The adjustment will be allowed during the time said interruption continues for 24 hours or more. The customer must contact the Company within a reasonable time (generally 30 days) or the Company may not be able to provide the adjustment.
6. The sole remedy for errors, omissions and out of service conditions, even if it is the Company's fault, is the out of service credit. The Company shall not be liable for any other damages regardless of the theory, whether direct, indirect, incidental, special or consequential.

(T)

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U S WEST COMMUNICATIONS, INC.

**Exchange and Network
Services Catalog**

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Release 6

Effective: 5-5-98

State of South Dakota

Issued: 3-31-98

10. MISCELLANEOUS SERVICE OFFERINGS

10.12 VOICE MESSAGING SERVICE

10.12.2 BUSINESS VOICE MESSAGING SERVICE

(T)

B. Terms and Conditions (Cont'd)

7. The Company makes no warranties to the customer and it expressly excludes and disclaims any implied warranties such as warranties of fitness for a particular purpose or merchantability.
8. The Company's voice messaging systems are designed to accommodate the user whose primary need is to have the user's telephone answered and messages taken on occasions when the user cannot or chooses not to answer the telephone. This service is not for use as an information service product that may be used by information providers whose primary use is to communicate information to a large number of callers or for use on other than a business exchange access line. If the Company determines that the customer will use the service as an information service, the Company reserves the right not to sell the service, or if the customer is using it as such, the Company may cancel the service.
9. The Company may disconnect, without advance notice, any BVMS which is used in such a manner as to prevent, obstruct, delay or otherwise interfere with the service of other users.
10. The Company, at its discretion, may change the customer interface such as the recorded prompts and directions, the length of time available for leaving messages, the number of messages which may be left and other aspects of the service without prior notice to the customer.
11. The Company may apply, at no monthly charge, additional features for the purpose of enhancing service. Easy access, Spanish, and the restart function are examples of these features.
12. Any long distance or usage charges that may be generated when using Call Routing to Number will be the responsibility of the Call Routing to Number customer.

NOTICE

THE INFORMATION CONTAINED IN THIS DOCUMENT IS SUBJECT TO CHANGE.

U S WEST COMMUNICATIONS, INC.

**Exchange and Network
Services Catalog**

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Release 3

State of South Dakota

Issued: 12-30-96

Effective: 1-1-97

10. MISCELLANEOUS SERVICE OFFERINGS

10.12 VOICE MESSAGING SERVICE

10.12.2 BUSINESS VOICE MESSAGING SERVICE

(T)

B. Terms and Conditions (Cont'd)

13. Customers with a Voice Mail mailbox may save up to 35 messages for up to 100 days. Additional message capacity may be purchased as specified in C., following. (C)
14. During a Call Router Traffic Study, changes may not be made to the menu selections because changes will invalidate the report data.

C. Rates and Charges

1. The nonrecurring charges may not apply to customers who subscribe to BVMS during the term of a BVMS promotion. The periods and provisions of such promotion will be determined by the Company. A promotion may be in the form of a coupon offer. (C)
2. The monthly rate may be refunded to customers who subscribe to BVMS during the term of a BVMS promotion. The periods and provisions of such promotion will be determined by the Company. A promotion may be in the form of a coupon offer. (C)
3. The CRTS monthly rate applies for each menu selection on the call router being studied. (T)

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U S WEST COMMUNICATIONS, INC.

Exchange and Network Services Catalog

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Release 6

State of South Dakota

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10. MISCELLANEOUS SERVICE OFFERINGS

10.12 VOICE MESSAGING SERVICE

10.12.2 BUSINESS VOICE MESSAGING SERVICE

C. Rates and Charges (Cont'd)

4. Changes in the ringing cycle associated with the Call Forwarding-Busy Line/Don't Answer feature will be charged for in accordance with the rates and charges for that feature.
5. The "add and/or change..." nonrecurring charge applies for each mailbox added or changed. (C)
6. The rates and charges for BVMS are in addition to all rates and charges for the associated underlying service.

a. Nonrecurring Charges

The following nonrecurring charges apply.

	USOC	NONRECURRING CHARGE	
• Add and/or change mailbox(es) and/or feature(s), per mailbox[1,2,3]	REAVD	\$10.00	(T)
• Call Router Traffic Study, add or change, per menu selection	SEPVS	39.00	

- [1] Charge does not apply to optional features when associated with a new mailbox(es) being activated or when optional features are ordered subsequent to initial installation of associated mailbox. (C)
(C)
- [2] Customers may make from one to ten number changes to each call router associated with Call Routing to Number with each order placed. This note does not apply to changes in the Call Routing feature.
- [3] Charge does not apply to add Extension Mailbox. (N)

NOTICE

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Release 8

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10. MISCELLANEOUS SERVICE OFFERINGS

10.12 VOICE MESSAGING SERVICE

10.12.2 BUSINESS VOICE MESSAGING SERVICE

C.6. (Cont'd)

b. Monthly Rates - Month-to-Month

	USOC	MONTHLY RATE	
• Mailboxes, each			
- Voice Mail	MBB,MBBXA	\$12.75	
- Discounted[1]	MBJ	11.00	
- Discounted[2]	-	10.75	(N)
• Optional mailboxes, each			
- Call Routing[3]	VPH,VPHXA	3.00	(T)
- Call Routing to Number[3]	VJMXU,VJMXV	12.00	(T)
- Extension Mailbox	VBS	5.00	
• Optional features, per mailbox, each			
- Additional Message Capacity			
- 50 Messages	VMC1X	3.00	
- 100 Messages	VMC2X	6.00	
- Call Router Traffic Study, per menu selection	VTM+X	5.00	
- Message Notification	VFN	3.00	
- Scheduled Greetings	VGT	3.00	

[1] The discounted rate applies when subscribed to in association with a *SMARTSET PLUS* Package. No nonrecurring charge will apply if subscribed to on the same order as a *SMARTSET* Package.

[2] The discounted rate applies when subscribed to in association with Business *CUSTOMCHOICE*. No nonrecurring charge will apply if subscribed to on the same order as Business *CUSTOMCHOICE*.

[3] A minimum of two mailboxes is required.

NOTICE

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Release 4

State of South Dakota

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10. MISCELLANEOUS SERVICE OFFERINGS

10.12 VOICE MESSAGING SERVICE

10.12.2 BUSINESS VOICE MESSAGING SERVICE

C.6. (Cont'd)

c. Monthly Rates - Volume Discounted

Volume discounts are offered to customers, which allows customers to pay a guaranteed fixed monthly rate for Voice Messaging over a 1- to 6-year period. Customers who sign an agreement are guaranteed against Company initiated changes in the monthly rates for the length of the agreement. The minimum service period for these agreements is 12 months and mailbox quantities may vary within the contracted price category. The terms specified in the Termination Liability/Waiver Policy in 2.2.14 of the Exchange and Network Services Tariff apply.

12 TO 23 MONTHS	24 TO 35 MONTHS	36 TO 59 MONTHS	60 TO 72 MONTHS
--------------------	--------------------	--------------------	--------------------

• Mailboxes, each

- Voice Mail

2 - 5	\$11.48	\$11.22	\$10.84	\$10.84
6 - 35	11.22	10.84	10.46	10.20
36 - 60	10.84	10.46	10.20	9.95
61 - 150	10.46	10.20	9.95	9.56
151 - 500	10.20	9.95	9.56	9.18
501 +	10.20	9.56	9.18	8.93

- Centrex 21 Voice Mail

12 TO 36 MONTHS	37 TO 60 MONTHS
--------------------	--------------------

2 - 5	\$10.20	\$10.20
6 - 35	10.20	10.20

(M)
(N)

(N)

(M) Material moved to Page 33.1.

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10. MISCELLANEOUS SERVICE OFFERINGS

10.12 VOICE MESSAGING SERVICE

10.12.2 BUSINESS VOICE MESSAGING SERVICE

C.6.c.(Cont'd)

	12 TO 23 MONTHS	24 TO 35 MONTHS	36 TO 59 MONTHS	60 TO 72 MONTHS	(M)
• Optional Features, per mailbox, each					
- Additional Message Capacity - 50 Messages	\$2.50	\$2.25	\$2.00	\$1.75	
- Message Notification	2.50	2.25	2.00	1.75	
- Scheduled Greetings	2.50	2.25	2.00	1.75	(M)

(M) Material moved from Page 33.

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State of South Dakota

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10. MISCELLANEOUS SERVICE OFFERINGS

10.13 FAX SERVICES

10.13.1 U S WEST ENHANCED FAX SERVICES

A. General

U S WEST Enhanced Fax Services allow customers with or without their own facsimile (fax) machines to send/receive faxes. Faxes can be held during busy line periods, sent to one or more numbers simultaneously, sent to specific numbers at specific times of day, and stored electronically for callers to request.

B. Definitions

Facsimile

An electronic method of transmitting or receiving images or printed matter; more commonly known as fax.

Prime/Non-Prime/Midnight Special

Prime, non-prime and midnight special indicate the time of day, at the senders location, that the FAX is sent. Prime is from 7:00 AM to 7:00 PM. Non-prime is from 7:00 PM to 12:00 AM and 4:00 AM to 7:00 AM. Midnight special is from 12:00 AM to 4:00 AM.

(C)

(C)

NOTICE

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VIA OVERNIGHT MAIL

January 13, 2000

William Bullard, Jr.
Executive Director
South Dakota Public Utilities Commission
Capitol Building, 1st Floor
500 East Capitol Avenue
Pierre, SD 57501-5070

RECEIVED

JAN 14 2000

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

RE: Petitioner's Brief – Docket No. TC99-113

Dear Mr. Bullard,

Enclosed is the original and 10 copies of the Petitioner's Brief for filing with the Commission. If you have any questions, please give me a call.

Sincerely,



William P. Heaston
Associate General Counsel
P.O. Box 66
Irene, SD 57037
Telephone: (605) 263-7212
Fax: (605) 263-3844
Email: wpheast@McLeodUSA.com

cc: Service list

FACTS

On September 22, 1999, U S WEST notified MTSI that it was preparing to disconnect its VMS service from the approximately 450 customers that had the VMS service in conjunction with MTSI's provisioning of local exchange service through the resale of U S WEST's Centrex service. MTSI purchased VMS from U S WEST's South Dakota Local Exchange and Network Services Catalog (Catalog).¹ MTSI paid the full retail price for VMS as stated in the Catalog.

When MTSI questioned U S WEST as to the reason for the disconnection, U S WEST stated that it was not required by the Telecommunications Act of 1996 to sell VMS for resale by MTSI and that, absent any Commission order to the contrary, it would not sell VMS to a competitor for resale. As of November 30, 1999, all MTSI VMS customers were disconnected from U S WEST's VMS. Additional facts are contained in the Stipulation.

ISSUE

Whether U S WEST violated the nondiscrimination provisions of SDCL § 49-31-11 by disconnecting MTSI's customers from U S WEST's retail VMS.

ARGUMENT

1. Scope of Commission Authority. The matter comes before the Commission as a Petition for Declaratory Ruling (Petition). SDCL § 1-26-15 gives to the Commission the authority through rules to act on this Petition, and that such rulings have the status of Commission decisions or orders in contested cases. There is nothing in SDCL chapter 1-26 or elsewhere in the Codified Laws, which would suggest that other provisions relating

¹ The relevant Catalog pages are attached as Exhibit A to the Stipulation filed in this matter. The Stipulation is attached as Appendix 1 to this brief.

to the conduct of contested cases is applicable.² The Commission has promulgated administrative rules governing the Petition at ARSD §§ 20:10:01:34 and 20:10:01:35. ARSD 20:10:01:35 provides for a 30-day time limit for consideration of the petition beginning with the filing of the Petition or within 30 days following the receipt of such other or further information from the petitioner, which is MTSI.

This matter is raised in this context because MTSI has agreed to a Stipulation with U S WEST to facilitate the Commission's request to MTSI for "such other or further information as may be required." MTSI did not intend by that accommodation to waive any statutory or regulatory provision governing the appropriate processing of the Petition.

2. Applicable Statutory Considerations. At the outset MTSI wants to be absolutely clear that this Petition does not cite as authority for any Commission action, nor is it reliant on any provision of federal law or the Telecommunications Act of 1996, in seeking a ruling from the Commission in this Petition. This Petition is made under South Dakota law for an interpretation of South Dakota statute only.

It is well settled in South Dakota law that statutes are to be construed primarily from the language expressed in the statute.³ The intent of the legislature is derived from the plain, ordinary and popular meaning of statutory language.⁴ Where the language of a statute is clear, certain and unambiguous, the Commission's only function is to apply the statute as clearly expressed.⁵ The intent of a statute must be determined from the statute as a whole, as well as enactments relating to the same subject.⁶ Additionally, the

² See, SDCL §§ 1-26-16 through 1-26-26, inclusive.

³ Nielson v. AT&T Corp., 597 NW2d 434, 439 (SD 1999); U S WEST v. PUC, 505 NW2d 115, 122-23 (SD 1993); In re AT&T Information Systems, 405 NW2d 24 (SD 1987).

⁴ In the Matter of the Petition for Declaratory Ruling of Northwestern Public Service, 560 NW2d 925 (SD 1997).

⁵ U S WEST, supra.

⁶ Nielson, supra.

interpretation of a statute by an agency charged with enforcing that statute is entitled to deference.⁷ The Commission has the responsibility for enforcing the telecommunications law in the state of South Dakota.⁸

There are several state statutes applicable to this Petition. In the first instance SDCL § 49-31-1(27) defines a telecommunications service as follows:

"Telecommunications service," the transmission of signs, signals, writings, images, sounds, messages, data or other information of any nature by wire, radio, lightwaves, electromagnetic means, or other similar means. It does not include the provision of terminal equipment used to originate or terminate such service, broadcast transmissions by radio, television and satellite stations regulated by the federal communications commission and one-way cable television service; (Emphasis added).

If it is nothing else U S WEST's VMS is a service used for the storage and transmission of messages and other information by the telecommunications network deployed by U S WEST in South Dakota. While U S WEST may argue that the federal law has defined it differently, it is not the federal definition which the Commission is charged with applying and enforcing.⁹ U S WEST's Catalog terms and conditions for VMS, both residential and business, describe a service used to record, store, retrieve, save and handle audio messages.¹⁰ The residential description goes on to state that customers can send, reply and copy/forward messages to others in the same system without having to dial telephone numbers one at a time.¹¹ The Catalog describes perfectly a service that transmits messages using telephone facilities by wire or other similar means. The statutory

⁷ In re PAM Oil, Inc., 459 NW2d 251 (SD 1990); In re Aiken, 296 NW2d 538 (SD 1980).

⁸ See e.g., SDCL §§ 49-31-3, 49-31-7 and 49-31-7.1.

⁹ An administrative agency may exercise only the jurisdiction delegated to it by the legislature. In re Solid Waste Disposal Permit Application, 295 NW2d 328,331 (SD 1980).

¹⁰ Exhibit A to Appendix 1, sections 10.12.1.A and 10.12.2.A.

¹¹ Id., section 10.12.1.A.

definition of a telecommunications service is clear, certain and unambiguous. VMS under South Dakota law is a telecommunications service.

In the second instance SDCL §§ 49-31-3, 49-31-7 and 49-31-7.1 are the main expressions of the Commission's authority to regulate telecommunications services and telecommunications companies. There is no doubt that U S WEST is a telecommunications company as that term is defined in SDCL § 49-31-1(26). SDCL § 49-31-3 gives the Commission general supervision and control of all telecommunications companies, the authority to inquire into any unjust discrimination, and the power necessary to properly supervise and control such companies. In addition to the powers in SDCL § 49-31-3, SDCL § 49-31-7 gives the Commission the ability to order changes in the manner in which U S WEST operates its facilities or does business, if necessary, reasonable and expedient to promote the convenience and accommodation of the public. Again the language of the statutes is clear, certain and unambiguous. The Commission has the authority to determine whether the denial of or the disconnection of a customer from a retail service is unjustly and unreasonably discriminatory in violation of state law.

Finally, SDCL § 49-31-11 prohibits U S WEST from unjustly or unreasonably prejudicing or disadvantaging any person in the provision of any telecommunications service. The determination now is whether on the facts and the law, the action by U S WEST violates this statute.

3. The Unjust and Unreasonable Prejudicing of MTSI and its Customers. MTSI used U S WEST's VMS in conjunction with the resale of U S WEST's Centrex service to provide a competitive alternative to U S WEST's local exchange service in South Dakota. MTSI did not order nor did its customers receive U S WEST's VMS as a wholesale

service under the provisions of any interconnection agreement or any provision of the Telecommunications Act of 1996. MTSI ordered VMS out of U S WEST's Catalog and the customer paid the full retail price for that service in the same manner in which any other retail residential or business customer who purchased VMS.

A further review of the terms and conditions in the Catalog¹² clearly reveal that there is no discussion of the use of VMS in conjunction with the resale of any other service. In fact, the only statements that could be construed as prohibitions appear in section 10.12.1.B.2, if it is used to the detriment of other customers and section 10.12.2.B.8 where U S WEST reserves the right to not sell or cancel the service where business VMS is used as an information service as that term is defined in the same section. Although the Catalog details competitive services, and although the filing of the Catalog does not require, nor has it received, Commission approval (which if it had such approval would have elevated the Catalog to effect of law), once again the language is clear, certain and unambiguous. The retail service is available to anyone willing to pay the Catalog price to have it.¹³

The only justification U S WEST provided prior to the filing of this Petition is in the email detailed in paragraph 7 of the Stipulation. By any interpretation the tying of the denial and disconnection of VMS to MTSI to the Telecommunications Act of 1996 sends the clear message that such denial and disconnection is directly the result of the enactment which attempts to bring competition to the local exchange market. It is

¹² Exhibit A to Attachment 1, sections 10.12.1.B and 10.12.2.

¹³ That assertion may not be entirely accurate. Business VMS is limited to where it is technically/economically feasible (section 10.12.2.B.3), while no similar limitation appears in the terms and conditions of residential VMS. Additionally, U S WEST may argue that because sections 10.12.1.C.2 and 10.12.2.C.6 state that the prices for VMS "are in addition to all rates and charges for the associated underlying service," use of VMS with resold service is not allowed. Nowhere in section 10.12 is the term

precisely because of MTSI's status as a competitor, and the status of the customer as a customer of competitor MTSI's resold Centrex service, that U S WEST decided to deny and disconnect service. It is a blatantly anti-competitive action to make competition in U S WEST service territory more difficult.

The anti-competitive nature of U S WEST's decision and actions is driven home by the facts in the Stipulation which detail the enormous cost U S WEST incurred in recent years to deploy VMS in South Dakota. One would think that after spending over \$2.9 million, U S WEST would seek to have everyone it could as a customer of that service, especially when the customer, whether it is MTSI or the individual residential or business customer of U S WEST's resold Centrex service, is willing to pay the full, retail price for the service. Instead U S WEST found it more desirable to rid itself of 450 VMS customers and take at a minimum as \$6.95 per month per customer revenue hit¹⁴, to certainly more than \$12.75 per month per customer revenue loss,¹⁵ just to make competitive life more difficult for MTSI. What U S WEST's action says to the Commission is that U S WEST is so determined to make the service provisioning of a competitor difficult that it is willing to sacrifice investment, revenue and customer goodwill to keep competition at bay. To find that this is a just, reasonable and prudent business decision by U S WEST, which does not unjustly and unreasonably discriminate against competitors and their customers, would strip SDCL § 49-31-11 of its meaning and effect.

"associated service" defined. It could be any local exchange service whether provided by U S WEST directly to the customer or through resale, or other forms of competitive provisioning.

¹⁴ Catalog, section 10.12.1.C.6.

¹⁵ Catalog, section 10.12.2.C.6.b.

4. Conclusion. No doubt there are alternative VMS platforms available, and no doubt MTSI can provide its own VMS either through collocation of a VMS device in the U S WEST central office or at some remote location. There is also no doubt that U S WEST has Message Delivery Service-Interoffice (MDSI) and other dedicated facilities and services available to connect U S WEST's central office with those alternative platforms. MTSI purchases MDSI from U S WEST for that purpose. But all of those facts do not justify U S WEST's unjust and unreasonable discriminatory behavior. The only reason a competitor or the customer of a competitor cannot get access to U S WEST's retail VMS platform is because of the competitor status. That openly discriminatory treatment of customers for a service is not consistent with the provisions of SDCL § 49-31-11.

Accordingly, MTSI respectfully requests that this Petition be granted, that disconnection and denial of service to a customer, whether it be MTSI or any individual customer of MTSI, willing to pay the full, retail price for VMS, be declared in violation of SDCL § 49-31-11, and that the Commission rule that MTSI and its customers be allowed to purchase the retail VMS service.

Respectfully submitted this 14th day of January, 2000.



William P. Heaston
Barbara E. Berkenpas
McLeodUSA Telecommunications
Services, Inc.
P.O. Box 66
Irene, SD 57037


Its Attorneys

AFFIDAVIT OF SERVICE

I, William P. Heaston, on the 13th day of January, 2000, served the attached McLeodUSA's Brief in the Matter of the Petition of McLeodUSA Telecommunications Services, Inc. for a Declaratory Ruling on Whether the Discontinuance of Retail Sale of Voice Messaging Service by US WEST Communications, Inc., to McLeodUSA Violates SDCL 49-31-11 by U.S. Mail to all persons at the addresses indicated below:

Thomas J. Welk
Attorney at Law
Boyce, Murphy, McDowell & Greenfield, LLP
101 North Phillips Ave., Suite 600
Sioux Falls, SD 57104

Alex Duarte
Attorney at Law
US WEST Communications, Inc.
1801 California Street, 51st Floor
Denver, CO 80202



William P. Heaston

APPENDIX 1

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

In the Matter of the Petition of McLeodUSA)	
Telecommunications Services, Inc., for a)	
Declaratory Ruling on Whether the Discon-)	TC99-113
tinuance of the Retail Sale of Voice Messaging)	
Service by U S WEST Communications, Inc.,)	
to McLeodUSA Violates SDCL 49-31-11.)	

STIPULATION OF FACTS

McLeodUSA Telecommunications Services, Inc. (McLeodUSA) and U S WEST Communications, Inc.'s (U S WEST), by and between undersigned counsel, hereby stipulate and agree as follows:

1. U S WEST Voice Messaging Service (VMS) was first introduced in South Dakota on October 1, 1992 in the Sioux Falls and Rapid City central offices. The service was expanded to the Northern Black Hills, Pierre and Ft. Pierre in 1999. U S WEST has invested more than \$1.6 million in capital and more than \$1.3 million in expense in deploying VMS in South Dakota and currently has VMS available to over 76% of its retail residential and business access lines in the state. Additionally, U S WEST has spent more than \$500,000 in research in its 14-state regional market to determine the VMS configurations most attractive to U S WEST customers. Currently, U S WEST uses Octel equipment from Lucent to provide VMS in South Dakota and has deployed two Octel platforms in the Sioux Falls market and one in the Rapid City market.
2. The South Dakota Public Utilities Commission (Commission) has classified VMS as a fully competitive service.
3. Several VMS platforms such as Octel, Converse, Cisco-Amteva, are currently available from vendors to providers of telecommunications services in South Dakota, such as McLeodUSA, which would enable those providers to offer VMS in competition with U S WEST. McLeodUSA and other competitive local exchange service providers utilize alternative platforms to provide their own VMS service in South Dakota. Because U S WEST is the incumbent, facilities-based, local exchange service provider in South Dakota, the competitive providers, including McLeodUSA, use U S WEST's services such as Message Delivery Service-Interoffice (MDSI) or other dedicated services to provide connectivity between the local customer and the alternative VMS platform. U S WEST has not denied MDSI or other dedicated service connectivity to McLeodUSA for VMS.

4. U S WEST and McLeodUSA have an Interconnection Agreement (Agreement), which permits collocation of a McLeodUSA VMS platform in U S WEST central offices, and which was approved by the Commission on July 23, 1999. The Agreement is on file with the Commission as required by federal law and the terms and conditions of that Agreement are incorporated by reference in this Stipulation.

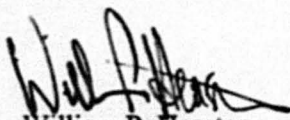
5. McLeodUSA purchased VMS from U S WEST at retail prices from U S WEST's South Dakota Local Exchange and Network Services Catalog. The relevant Catalog pages are attached as Exhibit A to this Stipulation and the language of those pages is incorporated as a part of this Stipulation.

6. VMS was purchased by McLeodUSA to be used by McLeodUSA customers who have local exchange service through the McLeodUSA resale of U S WEST's Centrex service in South Dakota. McLeodUSA does purchase Centrex service at a wholesale discount for resale in U S WEST's local exchange markets.

7. On July 7, 1999, in response to a question from McLeodUSA, U S WEST stated in an email that U S WEST has consistently held the position that Voice Mail is an enhanced service, not a telecommunications service required for resale under the Telecommunications Act of 1996, and that in South Dakota the Commission has agreed with that position. On or about September 22, 1999, McLeodUSA was specifically notified that VMS would be discontinued in South Dakota when it received an email from U S WEST that service would be denied starting that day. With the assistance of the U S WEST account team, the disconnection of service did not occur at that time.

8. McLeodUSA had approximately 450 customers using U S WEST's VMS product in South Dakota in 1999. U S WEST refused to grandfather existing McLeodUSA VMS resale customers in South Dakota. As of November 30, 1999, all McLeodUSA customers for U S WEST's VMS were disconnected. McLeodUSA now provides VMS to these customers through an alternative platform.

Stipulated and agreed to on the date indicated below:



William P. Heaston
Associate General Counsel
McLeodUSA Telecommunications
Services, Inc.
January 12, 2000



Thomas J. Welk
Alex M. Duarte
U S WEST Communications, Inc
Its Attorneys
January 12, 2000

EXHIBIT A

U S WEST COMMUNICATIONS, INC.

Exchange and Network Services Catalog

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Page 23

Release 6

State of South Dakota

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10. MISCELLANEOUS SERVICE OFFERINGS

10.12 VOICE MESSAGING SERVICE

10.12.1 RESIDENCE VOICE MESSAGING SERVICE

(T)

A. Description

U S WEST Residence Voice Messaging Service (VMS) provides an audio mailbox to record, store, retrieve, review, save and to handle audio messages for residence customers. The service will greet incoming callers with a personal or a standard greeting in either English or Spanish. It provides audio prompts and personal security codes for customers and users of the service. Customers can send, reply and copy/forward messages to others on the same local messaging system as well as send messages to others on the same messaging system without having to dial their telephone numbers/mailbox numbers one at a time. Customers can access the service from any tone signaling telephone. Listed below are the types of VMS available to residence customers:

(T)

1. Mailboxes

Call Forwarding-Busy Line/Don't Answer with Message Waiting Indication

This capability is provided by equipping a customer's telephone service with Call Forwarding-Busy Line/Don't Answer (CFBDA) and with Message Waiting Indication (MWI) in addition to a voice messaging mailbox. CFBDA automatically forwards incoming calls to the mailbox when the customer's telephone line is busy or does not answer. MWI provides a stutter dial tone when messages are waiting.

Call Forwarding-Busy Line/Don't Answer with Message Waiting Indication - Simultaneous (CFBDA/MWI-S)

This capability is provided by equipping a customer's telephone service with CFBDA and with MWI in addition to a voice messaging mailbox. CFBDA automatically forwards incoming calls to the mailbox when the customer's telephone line is busy or does not answer. CFBDA/MWI-S provides a simultaneous stutter dial tone and light indicator when messages are waiting.

Mailbox Only

This capability is provided by equipping a customer's telephone service with a voice messaging mailbox only. It does not include any other service or feature. Customers subscribing to Mailbox Only must have their lines equipped with a Call Forwarding feature at rates and charges specified elsewhere. In addition, customers wishing to receive notification of new messages waiting to be retrieved, must have their lines equipped with Message Waiting Indication at rates and charges specified elsewhere.

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U S WEST COMMUNICATIONS, INC.

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Release 4

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10. MISCELLANEOUS SERVICE OFFERINGS

10.12 VOICE MESSAGING SERVICE

10.12.1 RESIDENCE VOICE MESSAGING SERVICE (Cont'd)

2. Optional Features

Message Notification

This option provides for the delivery or notification of new messages to a different location other than the customer's mailbox number. The customer has the option of sending messages to another telephone number or pager. The customer will have the ability to turn the notification on or off.

Additional Message Capacity

This option allows customers to have additional capacity added to their mailbox which will allow them to save either an additional 50 or 100 messages for a maximum of 100 days. Customers who subscribe to Extension Mailbox may only purchase an additional 50 messages.

Extension Mailbox

This option gives the customer three reduced function mailboxes, in addition to their personal mailbox. Messages can be left for any of these extension mailboxes by pressing certain digits on a tone signaling telephone. Each of the extension mailboxes can have a personal greeting which is played after the caller makes a selection. Messages left in an extension mailbox can only be retrieved using the extension mailbox's security code.

(C)
(C)

(N)

(N)

B. Terms and Conditions

1. VMS will be provided 24 hours per day, 7 days per week.
2. The Company may disconnect without advance notice, any VMS which is used in such a manner as to prevent, obstruct, delay or otherwise interfere with the service of other users.
3. The Company, at its discretion, may change the customer interface such as the recorded prompts and directions, the length of time available for leaving messages, the number of messages which may be left and other aspects of the service without prior notice to the customer.

(M)

(M) Material moved to Page 23.2.

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10. MISCELLANEOUS SERVICE OFFERINGS

10.12 VOICE MESSAGING SERVICE

10.12.1 RESIDENCE VOICE MESSAGING SERVICE

B. Terms and Conditions (Cont'd)

4. Customers subscribing to *MARKET EXPANSION LINE* may subscribe to Mailbox Only. These customers would not subscribe to another Call Forwarding feature nor would Message Waiting Indication be necessary. (M)
5. The Company may apply, at no charge, additional features for the purpose of enhancing service. Easy Access, removal of the audio logo and the restart function are examples of these features.
6. Customers may save up to 35 messages for up to 100 days. Additional message capacity may be purchased as specified in C., following. (M)

C. Rates And Charges (M1)

1. The rates and charges for VMS with CFBDA/MWI or CFBDA/MWI-S include the provision of Call Forwarding-Busy Line/Don't Answer and Message Waiting Indication.
2. Except as otherwise indicated, the rates and charges for VMS are in addition to all rates and charges for the associated service.
3. When, at the request of the customer, changes are made to existing VMS, the nonrecurring charge shall apply. (M1)

(M) Material moved from Page 23.1.

(M1) Material moved from Page 24.

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State of South Dakota

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10. MISCELLANEOUS SERVICE OFFERINGS

10.12 VOICE MESSAGING SERVICE

10.12.1 RESIDENCE VOICE MESSAGING SERVICE

C. Rates and Charges(Cont'd)

4. Changes in the ringing cycle associated with the Call Forwarding Busy Line/Don't Answer feature may be charged for in accordance with the charges for that feature
5. The rates and charges may not apply to customers who subscribe to VMS during the term of a Voice Messaging promotion. A promotion may be in the form of a coupon offer. The periods and provisions of such promotion will be determined by the Company.
6. The rates and charges are as follows:

	USOC	NONRECURRING CHARGE	MONTHLY RATE	
• Mailboxes, each line arranged[1]				
- With CFBDA/MWI	VMJXA	\$6.00	\$6.95	
- Discounted[2]	V4DXA	-	4.95	
- With CFBDA/MWI-S	VMJXB	6.00	6.95	
- Discounted[2]	V4DXB	-	4.95	
- Mailbox only	VMJXX	6.00	6.95	
- Discounted[2]	V4DXX	-	4.95	
• Optional Features, each line arranged[3]				
- Additional Message Capacity				
- 50 Messages	VMC1X	-	3.00	
- 100 Messages[4]	VMC2X	-	6.00	(T)
- Extension Mailbox	VBS	-	2.00	(N)
- Discounted[2]	V5D	-	1.00	(N)
- Message Notification	VFN	-	3.00	
- Discounted[2]	V6D	-	2.00	
- Spanish	S8V	-	-	

[1] The nonrecurring charge does not apply when changing from one type of Voice Messaging to another.

[2] Discounted rate applies when this mailbox is added as a part of *CUSTOMCHOICE*.

[3] The nonrecurring charge applies only when ordered subsequent to the installation of service.

[4] This feature is not available with Extension Mailbox.

(M) Material moved to Page 23.2.

(N)

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10. MISCELLANEOUS SERVICE OFFERINGS

10.12 VOICE MESSAGING SERVICE (Cont'd)

10.12.2 BUSINESS VOICE MESSAGING SERVICE

(T)

A. Description

1. *U S WEST* Business Voice Messaging Service (BVMS) can answer incoming calls, placed to the customer's telephone line, when the called number is busy or if the called number is not answered. The service will greet incoming callers with a personal or a standard greeting in either English or Spanish. It then receives and saves the caller's messages for review by the customer. Customers can retrieve messages left for them from any tone signaling telephone.

(T)

2. Mailboxes

The following mailbox is available with BVMS. This mailbox is provided on a stand alone basis, in association with one or more additional mailboxes, or with one or more options.

(T)

(T)

Voice Mail

(C)

This mailbox answers incoming calls placed to the customer when their telephone number is busy or if the call is not answered. The Voice Mail mailbox can greet callers with a personal or standard greeting. The mailbox receives and saves the caller's message for review by the customer. The basic features of the Voice Mail mailbox include route to other number, personal and extended absence greeting, security code, receiving and disposing of messages, pause, skip-forward, skip-backwards and replay of messages. Customers can also send, reply and copy/forward messages to others on the same local messaging system, as well as send messages to others on the same messaging system without having to dial their telephone numbers/mailbox numbers one at a time. Customers can retrieve messages left for them from any tone signaling telephone.

(C)

(D)

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10. MISCELLANEOUS SERVICE OFFERINGS

10.12 VOICE MESSAGING SERVICE

10.12.2 BUSINESS VOICE MESSAGING SERVICE

A. Description (Cont'd)

3. Optional Feature Mailboxes

Call Routing

This feature is a front-end call routing service, using menu selections, that helps callers make quick connections to a particular customer's or department's mailbox by pressing single digits on a tone signaling telephone. This feature is used with two or more Voice Mail mailboxes. Calls placed to a call router may be directed to any other call router. (C)

This feature is not technically compatible with an extended absence greeting.

Call Routing to Number

This feature is a front-end call routing service, using menu selections, that helps touch-tone callers make quick connections to a particular customer's or department's Voice Mail mailbox, or another local or 800/800 type telephone number. Below are the potential options a caller will have once they are in the call routing mailbox:

- Route to a Voice Mail mailbox, leave a message or press "0" and route to the customer's attendant, and/or,
- Route to another telephone number. If this number is busy, isn't answered, or is answered by some form of telephone answering, the caller will not be routed back to the original routing mailbox.

Calls routed via this service may route to numbers within the same local calling area or 800/800 type numbers. The customer has the option of selecting a default option for calls placed from rotary dial telephones. This feature must be used in conjunction with two or more Voice Mail mailboxes which are billed to the same telephone number.

This feature is not technically compatible with an extended absence greeting.

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10. MISCELLANEOUS SERVICE OFFERINGS

10.12 VOICE MESSAGING SERVICE

10.12.2 BUSINESS VOICE MESSAGING SERVICE

A.3. (Cont'd)

Extension Mailbox

This option gives the customer three reduced function mailboxes, in addition to their personal mailbox. Messages can be left for any of these Extension Mailboxes by pressing certain digits on a tone signaling telephone. Each of the Extension Mailboxes can have a personal greeting which is played after the caller makes a selection. Messages left in an Extension Mailbox can only be retrieved using the individual Extension Mailboxes' security code. This option is not technically compatible with Scheduled Greetings or an extended absence greeting.

(T)

(T-M)

(T)

(T)

(C-M)

(M1)

(D)

(C)

4. Optional Features

Additional Message Capacity

This option allows customers to have additional capacity added to their mailbox which will allow them to save either an additional 50 or 100 messages for a maximum of 100 days. Additional message capacity of 100 messages is not compatible with Extension mailboxes.

(C)

Call Router Traffic Study (CRTS)

A CRTS is a custom report that identifies, by call router, the number of calls routed to each menu selection. CRTS is available to customers subscribing to Call Routing and/or Call Routing to Number feature(s).

Data is available only on a monthly basis, i.e., the report period starts on the first day of a month and ends on the last day of that month. Studies may be requested for one or more months. Rotary calls will be included in the return to other number count.

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(M2)

(M) Material moved from Page 28.

(M1) Material moved to Page 28.

(M2) Material moved to Page 26.

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10. MISCELLANEOUS SERVICE OFFERINGS

10.12 VOICE MESSAGING SERVICE

10.12.2 BUSINESS VOICE MESSAGING SERVICE

A.4. (Cont'd)

Message Notification

This option provides for the delivery or notification of new messages to a different location other than the customer's mailbox number. The customer has the option of sending notification or messages to another number in their BVMS system, or notification only to a local telephone number or pager. A notification schedule may be established to call the customer immediately when new urgent messages are left in the customer's mailbox or when any message is left. The customer will have the ability to turn the notification on or off.

Scheduled Greetings

This option offers the customer the ability to have two separate greetings that would play at different times during the workday. These "open" and "closed" greeting times would be controlled by the customer. The customer can also designate that either of these greetings be played at different times during the weekend.

(T)

(M)
(M1)

(M1)

(M2)

(M2)
(M3)

- (M) Material moved to Page 26.
(M1) Material moved from Page 26.
(M2) Material moved from Page 27.
(M3) Material moved to Page 27.

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10. MISCELLANEOUS SERVICE OFFERINGS

10.12 VOICE MESSAGING SERVICE

10.12.2 BUSINESS VOICE MESSAGING SERVICE (Cont'd)

(T)

B. Terms and Conditions

1. The minimum service period for BVMS is one month.
2. BVMS will be provided 24 hours per day, 7 days per week.
3. BVMS will be provided where technically and/or economically feasible and where sufficient demand exists to warrant the provision of the service.
4. Customers subscribing to BVMS should have their lines equipped with Call Forwarding - Variable, Call Forwarding Busy Line, Call Forwarding Don't Answer, Call Forwarding Busy Line/Don't Answer, or Remote Access Forwarding/Scheduled Forwarding in order to transport their calls to the voice response unit. Customers wishing to receive notification of messages waiting to be retrieved must have their lines equipped with message waiting indication.
5. The Company does not guarantee this service. However, in the event of an interruption to the service which is not due to the negligence or willful act of the customer or the premises facilities beyond the Demarcation Point, a pro rata adjustment of the monthly charge for the service will be allowed. The adjustment will be allowed during the time said interruption continues for 24 hours or more. The customer must contact the Company within a reasonable time (generally 30 days) or the Company may not be able to provide the adjustment.
6. The sole remedy for errors, omissions and out of service conditions, even if it is the Company's fault, is the out of service credit. The Company shall not be liable for any other damages regardless of the theory, whether direct, indirect, incidental, special or consequential.

(T)

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10. MISCELLANEOUS SERVICE OFFERINGS

10.12 VOICE MESSAGING SERVICE

10.12.2 BUSINESS VOICE MESSAGING SERVICE

(T)

B. Terms and Conditions (Cont'd)

7. The Company makes no warranties to the customer and it expressly excludes and disclaims any implied warranties such as warranties of fitness for a particular purpose or merchantability.
8. The Company's voice messaging systems are designed to accommodate the user whose primary need is to have the user's telephone answered and messages taken on occasions when the user cannot or chooses not to answer the telephone. This service is not for use as an information service product that may be used by information providers whose primary use is to communicate information to a large number of callers or for use on other than a business exchange access line. If the Company determines that the customer will use the service as an information service, the Company reserves the right not to sell the service, or if the customer is using it as such, the Company may cancel the service.
9. The Company may disconnect, without advance notice, any BVMS which is used in such a manner as to prevent, obstruct, delay or otherwise interfere with the service of other users.
10. The Company, at its discretion, may change the customer interface such as the recorded prompts and directions, the length of time available for leaving messages, the number of messages which may be left and other aspects of the service without prior notice to the customer.
11. The Company may apply, at no monthly charge, additional features for the purpose of enhancing service. Easy access, Spanish, and the restart function are examples of these features.
12. Any long distance or usage charges that may be generated when using Call Routing to Number will be the responsibility of the Call Routing to Number customer.

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10. MISCELLANEOUS SERVICE OFFERINGS

10.12 VOICE MESSAGING SERVICE

10.12.2 BUSINESS VOICE MESSAGING SERVICE

(T)

B. Terms and Conditions (Cont'd)

13. Customers with a Voice Mail mailbox may save up to 35 messages for up to 100 days. Additional message capacity may be purchased as specified in C., following. (C)
14. During a Call Router Traffic Study, changes may not be made to the menu selections because changes will invalidate the report data.

C. Rates and Charges

1. The nonrecurring charges may not apply to customers who subscribe to BVMS during the term of a BVMS promotion. The periods and provisions of such promotion will be determined by the Company. A promotion may be in the form of a coupon offer. (C)
2. The monthly rate may be refunded to customers who subscribe to BVMS during the term of a BVMS promotion. The periods and provisions of such promotion will be determined by the Company. A promotion may be in the form of a coupon offer. (C)
3. The CRTS monthly rate applies for each menu selection on the call router being studied. (T)

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10. MISCELLANEOUS SERVICE OFFERINGS

10.12 VOICE MESSAGING SERVICE

10.12.2 BUSINESS VOICE MESSAGING SERVICE

C. Rates and Charges (Cont'd)

4. Changes in the ringing cycle associated with the Call Forwarding-Busy Line/Don't Answer feature will be charged for in accordance with the rates and charges for that feature.
5. The "add and/or change..." nonrecurring charge applies for each mailbox added or changed. (C)
6. The rates and charges for BVMS are in addition to all rates and charges for the associated underlying service.

a. Nonrecurring Charges

The following nonrecurring charges apply.

	USOC	NONRECURRING CHARGE	
• Add and/or change mailbox(es) and/or feature(s), per mailbox[1,2,3]	REAVD	\$10.00	(T)
• Call Router Traffic Study, add or change, per menu selection	SEPVS	39.00	

[1] Charge does not apply to optional features when associated with a new mailbox(es) being activated or when optional features are ordered subsequent to initial installation of associated mailbox. (C)
(C)

[2] Customers may make from one to ten number changes to each call router associated with Call Routing to Number with each order placed. This note does not apply to changes in the Call Routing feature.

[3] Charge does not apply to add Extension Mailbox. (N)

U S WEST COMMUNICATIONS, INC.

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10. MISCELLANEOUS SERVICE OFFERINGS

10.12 VOICE MESSAGING SERVICE

10.12.2 BUSINESS VOICE MESSAGING SERVICE

C.6. (Cont'd)

b. Monthly Rates - Month-to-Month

	USOC	MONTHLY RATE	
• Mailboxes, each			
- Voice Mail	MBB,MBBXA	\$12.75	
- Discounted[1]	MBJ	11.00	
- Discounted[2]	-	10.75	(N)
• Optional mailboxes, each			
- Call Routing[3]	VPH,VPHXA	3.00	(T)
- Call Routing to Number[3]	VJMXU,VJMXV	12.00	(T)
- Extension Mailbox	VBS	5.00	
• Optional features, per mailbox, each			
- Additional Message Capacity			
- 50 Messages	VMC1X	3.00	
- 100 Messages	VMC2X	6.00	
- Call Router Traffic Study, per menu selection	VTM+X	5.00	
- Message Notification	VFN	3.00	
- Scheduled Greetings	VGT	3.00	

[1] The discounted rate applies when subscribed to in association with a *SMARTSET PLUS* Package. No nonrecurring charge will apply if subscribed to on the same order as a *SMARTSET* Package.

[2] The discounted rate applies when subscribed to in association with Business *CUSTOMCHOICE*. No nonrecurring charge will apply if subscribed to on the same order as Business *CUSTOMCHOICE*. (N)

[3] A minimum of two mailboxes is required. (T)

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10. MISCELLANEOUS SERVICE OFFERINGS

10.12 VOICE MESSAGING SERVICE

10.12.2 BUSINESS VOICE MESSAGING SERVICE

C.6.c.(Cont'd)

	12 TO 23 MONTHS	24 TO 35 MONTHS	36 TO 59 MONTHS	60 TO 72 MONTHS	(M)
• Optional Features, per mailbox, each					
- Additional Message Capacity - 50 Messages	\$2.50	\$2.25	\$2.00	\$1.75	
- Message Notification	2.50	2.25	2.00	1.75	
- Scheduled Greetings	2.50	2.25	2.00	1.75	(M)

(M) Material moved from Page 33.

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10. MISCELLANEOUS SERVICE OFFERINGS

10.12 VOICE MESSAGING SERVICE

10.12.2 BUSINESS VOICE MESSAGING SERVICE

C.6. (Cont'd)

c. Monthly Rates - Volume Discounted

Volume discounts are offered to customers, which allows customers to pay a guaranteed fixed monthly rate for Voice Messaging over a 1- to 6-year period. Customers who sign an agreement are guaranteed against Company initiated changes in the monthly rates for the length of the agreement. The minimum service period for these agreements is 12 months and mailbox quantities may vary within the contracted price category. The terms specified in the Termination Liability/Waiver Policy in 2.2.14 of the Exchange and Network Services Tariff apply.

12 TO 23 MONTHS	24 TO 35 MONTHS	36 TO 59 MONTHS	60 TO 72 MONTHS
--------------------	--------------------	--------------------	--------------------

• Mailboxes, each

- Voice Mail

2 - 5	\$11.48	\$11.22	\$10.84	\$10.84
6 - 35	11.22	10.84	10.46	10.20
36 - 60	10.84	10.46	10.20	9.95
61 - 150	10.46	10.20	9.95	9.56
151 - 500	10.20	9.95	9.56	9.18
501 +	10.20	9.56	9.18	8.93

(M)

- Centrex 21 Voice Mail

(N)

12 TO 36 MONTHS	37 TO 60 MONTHS
--------------------	--------------------

2 - 5	\$10.20	\$10.20
6 - 35	10.20	10.20

(N)

(M) Material moved to Page 33.1.

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State of South Dakota
Issued: 4-22-96

10. MISCELLANEOUS SERVICE OFFERINGS

10.13 FAX SERVICES

10.13.1 U S WEST ENHANCED FAX SERVICES

A. General

U S WEST Enhanced Fax Services allow customers with or without their own facsimile (fax) machines to send/receive faxes. Faxes can be held during busy line periods, sent to one or more numbers simultaneously, sent to specific numbers at specific times of day, and stored electronically for callers to request.

B. Definitions

Facsimile

An electronic method of transmitting or receiving images or printed matter; more commonly known as fax.

Prime/Non-Prime/Midnight Special

Prime, non-prime and midnight special indicate the time of day, at the senders location, that the FAX is sent. Prime is from 7:00 AM to 7:00 PM. Non-prime is from 7:00 PM to 12:00 AM and 4:00 AM to 7:00 AM. Midnight special is from 12:00 AM to 4:00 AM.

(C)
|
(C)

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Alex M. Duarte
Senior Attorney



VIA FEDERAL EXPRESS

January 28, 2000

William Bullard, Jr., Executive Director
South Dakota Public Utilities Commission
500 E. Capitol Avenue
Pierre, South Dakota 57501-5070

RECEIVED

JAN 31 2000

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

FAX Received JAN 28 2000

RE: Docket No. TC99-113
In the Matter of the Petition of McLeodUSA Telecommunications Services, Inc.
for a Declaratory Ruling on Whether the Discontinuance of the Retail Sale of
Voice Messaging Service by U S WEST Communications, Inc. to McLeodUSA
Violates SDCL 49-31-11

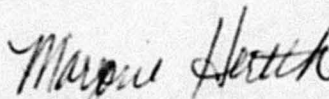
Dear Mr. Bullard:

Enclosed are an original and ten copies of U S WEST Communications, Inc.'s Reply
Brief to be filed in the above-referenced docket.

The documents will also be forwarded electronically.

Please stamp and return the enclosed extra copy of this letter in the enclosed addressed,
postage paid envelope.

Sincerely,


Marjorie Herlth
Secretary to Alex Duarte

Enclosures
/moh



JAN 31 2000

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA****SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

IN THE MATTER OF THE PETITION OF McLEODUSA)
 TELECOMMUNICATIONS SERVICES, INC. FOR A)
 DECLARATORY RULING ON WHETHER THE)
 DISCONTINUANCE OF THE RETAIL SALE OF)
 VOICE MESSAGING SERVICE BY U S WEST)
 COMMUNICATIONS, INC. TO McLEODUSA)
 VIOLATES SDCL 49-31-11.)

DOCKET NO. TC99-113

**U S WEST'S REPLY
BRIEF**

U S WEST Communications, Inc. ("U S WEST") submits the following brief in reply to the January 14, 2000 brief of McLeodUSA Telecommunications Services, Inc. ("McLeod").

STATEMENT OF PERTINENT STIPULATED FACTS

U S WEST's Voice Messaging Service (VMS) was first introduced in South Dakota in October 1992 in the Sioux Falls and Rapid City central offices. U S WEST expanded this service to the Northern Black Hills, Pierre and Fort Pierre in 1999. U S WEST has invested more than \$1.6 million in capital and more than \$1.3 million in expense in deploying VMS in South Dakota, and currently has VMS available to over 76% of its retail residential and business access lines in the state. Additionally, U S WEST has spent more than \$500,000 in research in its 14-state regional market to determine the VMS configurations most attractive to U S WEST customers. Currently, U S WEST uses Octel equipment from Lucent to provide VMS in South Dakota, and has deployed two Octel platforms in the Sioux Falls market and one in the Rapid City market. (Stipulated Fact No. 1.) The South Dakota Public Utilities Commission (Commission) has classified VMS as a fully competitive service. (Id., No. 2.)

Several VMS platforms such as Octel, Converse, Cisco-Amteva, are currently available from vendors to providers of telecommunications services in South Dakota, such as McLeod, which would enable those providers to offer VMS in competition with U S WEST. McLeod and

other competitive local exchange service providers utilize alternative platforms to provide their own VMS service in South Dakota. Competitive providers, including McLeod, use U S WEST's services such as Message Delivery Service-Interoffice (MDSI) or other dedicated services to provide connectivity between the local customer and the alternative VMS platform. U S WEST, however, has not denied MDSI or any other dedicated service connectivity to McLeod for VMS. (Stipulated Fact No. 3.)

Further, U S WEST and McLeod have an Interconnection Agreement (Agreement), which permits collocation of a McLeod VMS platform in U S WEST central offices, and which this Commission approved on July 23, 1999. The Agreement is on file with the Commission as required by federal law, and the terms and conditions of that Agreement are incorporated by reference in the January 12, 2000 Stipulation which the parties filed. (Stipulated Fact No. 4.)

McLeod had purchased VMS from U S WEST at retail prices from U S WEST's South Dakota Local Exchange and Network Services Catalog. The relevant Catalog pages are attached as Exhibit A to the January 12, 2000 Stipulation of the parties, and the language of those pages is incorporated as a part of the Stipulation of the parties. (Stipulated Fact No. 5.) McLeod purchased VMS from U S WEST for its local exchange customers to whom it resells U S WEST's Centrex service in South Dakota. McLeod purchases U S WEST's Centrex service at a wholesale discount for resale in U S WEST's local exchange markets. (Id., No. 6.)

U S WEST has consistently taken the position that VMS is an enhanced service, and not a telecommunications service required for resale under the Telecommunications Act of 1996 ("the Act" or "the federal Act"), as well as that this Commission has agreed with such position, and so advised McLeod. (Stipulated Fact No. 7.) As of November 30, 1999, U S WEST

discontinued its resale of VMS in South Dakota. McLeod now provides VMS to these customers through an alternative platform, and thus its customers are still able to have VMS. (Id., No. 8.)

ARGUMENT

I. VMS IS AN "ENHANCED" OR "INFORMATION" SERVICE, AND NOT A "TELECOMMUNICATIONS" SERVICE SUBJECT TO RESALE UNDER FEDERAL LAW

Preliminarily, and dispositively, U S WEST has no duty to offer VMS for resale to McLeod. This is so because, under the Telecommunications Act of 1996, the resale duty extends only to "telecommunications". See 47 U.S.C. section 251(c)(4). "Telecommunications" is the actual "transmission . . . of information of the user's choosing, without change in the form or content of the information as sent and received." 47 U.S.C. section 153(43). VMS does not involve the actual transmission of information such that these services are "telecommunications services." Similarly, VMS is not a "telecommunications service" because it acts on or changes the form or content of the information received." 47 U.S.C. section 153(48) and (51).

Rather, VMS is an "enhanced service" or an "information service," which are not held to be "telecommunications services." The FCC has defined "enhanced services" as "services, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information." 47 CFR section 64.702(a); see also Findings of Fact and Conclusions of Law; Order and Notice of Entry of Order, *In the Matter of the Interconnection Contract Negotiations between AT&T and U S WEST*; South Dakota Public Utilities Commission, Docket No. TC96-184, March 20, 1997 ("AT&T Order"), par. 147. The FCC has found that the definition of "enhanced services"

does not "include the provision of 'telecommunications services.'" First Report and Order, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, 11 F.C.C.R. 15499 (August 8, 19996) ("FCC Local Competition Order").

Moreover, the FCC has also expressly stated that all services previously considered to be "enhanced services" under the Telecommunications Act of 1934 are "information services" under the 1996 Act. First Report and Order, Implementation of the Telecommunications Act of 1996: Telemessaging, Electronic Publishing, and Alarm Monitoring Services, CC Docket No. 96-152 (released February 7, 1997); see also AT&T Order, par. 148. The federal Act defines "information services" as "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service." 47 U.S.C. section 153(20) (emphasis added); AT&T Order, par. 149.

Finally, the FCC has specifically concluded that VMS is a "telemessaging" service, and that telemessaging is an "information service." Notice of Proposed Rulemaking, Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended (released July 18, 1996), CC Docket No. 96-149, par. 54. "Telemessaging" is defined in the Act as "voice mail and voice storage and retrieval services, any live operator services used to record, transcribe, or relay messages (other than telecommunications relay services), and any ancillary services offered in combination with these services." Id.; 47 U.S.C. section 260(c) (emphasis added). Thus, VMS is an "information service," and hence is not a "telecommunications service" which must be made available for resale under the federal Act.

Here, U S WEST's South Dakota Exchange and Network Catalog defines U S WEST's Residential VMS service as providing "an audio mailbox to record, store, retrieve, review, save and to handle audio messages for residential customers." (Emphasis added.) U S WEST's Business VMS service is defined as a service which "... can answer incoming calls, placed to the customer's telephone line, when the called number is busy or if the called number is not answered." Thus, even apart from the federal pronouncements described above, U S WEST's VMS service by definition is not a telecommunications service that it must resell to McLeod.

Further, the FCC has explicitly found that U S WEST is subject to the obligations of section 251 of the Act only to the extent it provides telecommunications services, not information services. FCC Local Competition Order, par. 995 (entity that provides both telecommunications and information services "is subject to the obligations under section 251(a), [only] to the extent that it is acting as a telecommunications carrier"); see also Second Report and Order, In re Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, CC Docket No. 96-115 (released February 26, 1998), par. 45 ("[I]nformation services do not fall within the scope of section 222(c)(1)(A) because they are not 'telecommunications services'"); In re Federal-State Joint Board on Universal Service, FCC 98-67, Report to Congress, CC Docket No. 96-45, par. 57 (released April 10, 1998) (telecommunications and information, or enhanced, services are "mutually exclusive" categories); see also AT&T Order, par. 150.

Accordingly, U S WEST is only obligated to offer "telecommunications services" for resale under section 251(c)(4), and thus the resale obligation does not apply to VMS as a matter of law. Moreover, although it argues that the federal Telecommunications Act is not implicated here, McLeod is wrong. U S WEST respectfully submits that these are federal issues under the

Telecommunications Act of 1996, for which the FCC has sole jurisdiction. As this Commission well knows, when dealing with any federal telecommunications issues, or laws where the federal and state law conflict or are inconsistent, federal law preempts state law, and the FCC's jurisdiction preempts this Commission's jurisdiction. Although U S WEST does not necessarily believe there is a conflict between federal and South Dakota law, as discussed below, to the extent there is any such conflict or inconsistency, federal law preempts state law. More importantly, U S WEST raises this issue because it is clear that because these are issues of federal law, the FCC has the sole jurisdiction of this issue, and thus this Commission does not have any jurisdiction to preempt the FCC on by this issue.

II. EVEN IF THIS COMMISSION HAS JURISDICTION, U S WEST IS NOT OBLIGATED TO PROVIDE VMS UNDER SOUTH DAKOTA LAW

Moreover, even if this Commission has jurisdiction here, which U S WEST respectfully submits it does not, U S WEST still is not obligated to provide VMS to McLeod for resale.

A. VMS is not a "telecommunications service" under South Dakota law

Even if the Commission had jurisdiction, it cannot force U S WEST to provide VMS to McLeod because, for the same reasons stated above, VMS is not a "telecommunications service" under South Dakota law. SDCL 49-31-11 ("Section 11"), the basis of McLeod's petition, requires a "telecommunications service," which VMS is not, and thus section 11 cannot apply.

McLeod makes much ado of the fact that the definition of "telecommunications services" in SDCL 49-31-1(27) is somewhat different from the definition in the federal Act. Of course, for the reasons set forth above, to the extent they are in conflict or inconsistent, it is the federal definition of "telecommunications services" that prevails over and preempts the state definition. Nevertheless, even if the definition in SDCL 49-31-1(27) were to apply, VMS would still be an

enhanced or information service and not a "telecommunications service." This is because VMS is not a "transmission" as defined in that statute.

Moreover, in section 10.12 of the South Dakota Exchange and Network Services Catalog, Residential VMS service is described as providing "... an audio mailbox to record, store, retrieve, review, save and to handle audio messages for residence customers." (See Catalog, Ex. A to the Stipulation (emphasis added).) Business VMS services is described as a service which "...can answer incoming calls, placed to the customer's telephone line, when the called number is busy or if the called number is not answered." (Id.)

Further still, the terms for U S WEST's VMS service clearly state in Section C that "the rates and charges for VMS are in addition to all rates and charges for the associated underlying service." (See Catalog, Ex. A to the Stipulation.) It is the "underlying" residential or business basic exchange services which conform to the statutory definition of "telecommunications service," since, as stated, VMS does not transmit signs, signals, writings, images, sounds, messages, data or other information of any nature by wire, radio, lightwaves, electromagnetic means or other similar means. By the very definition of the product, VMS is nothing more than an adjunct device to handle calls generated and/or transported by "telecommunications services."

B. This Commission has already ruled that information and enhanced services are not "telecommunications services"

In addition to the FCC, this Commission itself has previously ruled that information services and enhanced services are not "telecommunications services", and thus that U S WEST is not obligated to make these services available for resale. Specifically, this Commission has already determined that because the federal definition of information services includes enhanced services, and thus enhanced services are not telecommunications services, U S WEST is not required to make its enhanced services available for resale. AT&T Order, par. 151; see generally

pars. 146-151. Thus, for the same reasons here, U S WEST respectfully submits that this Commission should rule that U S WEST is not obligated to provide its VMS to McLeod.

Moreover, just as with the definition of "telecommunications services" in SDCL 49-31-1(27), the federal definition of "telecommunications services" also includes the term "transmission." Nevertheless, both the FCC and this Commission saw fit to conclude that enhanced services and information services are not "telecommunications services." Thus, even under the South Dakota definition of "telecommunications services", it is clear that VMS is not a telecommunications service, and thus is not required to be offered for resale to McLeod or any other telecommunications carrier.

C. U S WEST has not unjustly or unreasonably prejudiced or disadvantaged McLeod, and thus has not violated SDCL 49-31-11

Even if this Commission has jurisdiction here, and even if VMS were determined to be a "telecommunications service," there is still no violation of SDCL 49-31-11. Section 11 prohibits unjust and unreasonable prejudicing or disadvantaging any person in the provision of any telecommunications service. Thus, even assuming VMS is a telecommunications service, there has been no "unjust or unreasonable" conduct by U S WEST, nor any unjust or unreasonable "prejudice or disadvantage" to McLeod.

1. U S WEST's discontinuance of VMS was not unjust or unreasonable

Preliminarily, U S WEST's conduct in discontinuing its VMS service for resale, which it is not obligated to sell, is well within its rights as a competitive provider of such services, and thus is not unjust or unreasonable. Despite all of its hyperbole about anti-competitive behavior, and speculation about U S WEST's motives for discontinuing the resale of VMS, McLeod has not presented a shred of evidence of any "unjust or unreasonable" conduct by U S WEST. Further, although McLeod argues that the tying of U S WEST's discontinuation of VMS resale

with the federal Act shows that U S WEST's conduct is anti-competitive, it fails to address the fact that the FCC, which is tasked to ensure the competitive goals of the federal Act, does not require the resale of enhanced services or information services.

Here, it is McLeod that has the burden of proof regarding "unjust or unreasonable" conduct by U S WEST, which burden it has failed to meet, and not U S WEST that has the burden of proof it did not act unjustly or unreasonably. Nevertheless, the facts show that U S WEST's discontinuation of VMS is not "unjust or unreasonable".

First, U S WEST notes that it has invested more than \$1.6 million in capital and more than \$1.3 million in expense in deploying VMS in South Dakota, and currently has VMS available to over 76% of its retail residential and business access lines in the state. (Stipulated Fact No. 1.) Additionally, U S WEST has spent more than \$500,000 in research in its 14-state regional market to determine the VMS configurations most attractive to its customers. (Id.) Further, U S WEST has purchased equipment from vendors like Lucent to deploy VMS to its customers in South Dakota. (Id.) Thus, U S WEST has spent its own money, and employed its own research and development, as part of its overall competitive business strategy, in order to deploy this enhanced service. U S WEST should be permitted to determine how to use, or not use, enhanced services that are the result of its expending considerable time, effort and resources developing such services.

In addition, VMS is not a service that can be said to be the result or benefit of incumbency. This is undoubtedly one of the reasons why the FCC has determined that incumbent local exchange carriers ("ILECs") need not make enhanced services like VMS available for resale. The question then becomes, in a competitive environment (which VMS certainly is by virtue that it is classified as a "fully competitive" service, and that there are many

alternative providers (Stipulated Fact Nos. 2, 3)), why should McLeod, which apparently has not had the foresight to develop its own VMS, be permitted to essentially leech off of U S WEST for this service? While the Act requires U S WEST as an incumbent carrier to provide certain services and infrastructure to its competitors and potential competitors, as part of its policy to foster local competition, it certainly does not require an incumbent to hand over every product or service it develops, simply because a competitor requests it. This is especially so because VMS was not the result of U S WEST's incumbency status. Nor does the Act permit a competitor to take advantage of the incumbent's foresight and industry in developing new services and products simply because the competitor itself has failed to develop such new products and services of its own.

Absent some requirement by law, U S WEST is not obligated to make available its own products and services to its competitors. Obviously, U S WEST is required under the Act to make available to competitors certain of its products and services. However, as stated above, McLeod makes no assertion (as none exists) that VMS is required to be provided under the Act. Thus, when viewed only on the state law claim of discrimination, any alleged unfair or unreasonable conduct by U S WEST should be judged as that of a vendor of any product or service in providing products and services to competitors.

It is settled law that a manufacturer of services (such as U S WEST is of VMS service) may refuse to deal with anyone so long as it does so independently. Monsanto Co. v. Spray-Rite Serv. Corp., 465 U.S. 752, 761, 104 S.Ct. 1464, 1469, 79 L.ED.2d 775 (1984) McLeod has not presented any fact, or even alleged, that U S WEST is doing anything but acting independently in discontinuing to provide VMS to McLeod. Businesses act and are expected to act to preserve

their own self interests. If U S WEST can legally refuse to provide products and services to competitors, how can its discontinuance of VMS to competitors like McLeod violate Section 11?

McLeod should not sit back and not spend a dime on its own service and products, and then demand them from U S WEST, who had the foresight to expend much time, effort and resources in order to develop these new (non-incumbent) services and products. Otherwise, U S WEST would have absolutely no incentive to develop any new products and services in order to respond to a highly competitive marketplace if it also must permit its competitors to take advantage of the fruits of its efforts.

2. McLeod is not unjustly or unreasonably prejudiced or disadvantaged

Even if Section 11 applied, McLeod has not been unjustly or unreasonably "prejudiced" or "disadvantaged". After all, McLeod can obtain VMS from other sources, and apparently has done so. (Stipulated Fact No. 8.) As stated, VMS platforms such as Octel, Converse and Cisco-Amteva are currently available in South Dakota from vendors to telecommunications providers which would enable such providers to offer VMS in competition with U S WEST. (Id., No. 3.) For example, several competitors in South Dakota, including Midco, already provide their own VMS. Moreover, U S WEST has not denied McLeod (or any other provider) with U S WEST services such as Message Delivery Service-Interoffice (MDSI) or any other dedicated service connectivity for VMS. (Id.)

Moreover, McLeod and U S WEST have an interconnection agreement that permits McLeod to collocate a McLeod VMS platform in U S WEST central offices. (Stipulated Fact No. 4.) Further still, the fact VMS is available from other vendors is evident by McLeod's admission it now provides VMS to its customers through an alternative platform. (Id., No. 8.)

Accordingly, even if McLeod had a legitimate complaint, or if economic hardship were relevant, neither of which applies here, McLeod certainly has not met any burden of proof that providing VMS itself, or through another vendor, is not feasible. Nor has McLeod met any burden of proof that providing VMS itself or through another vendor would constitute an undue hardship or otherwise create a barrier to competition with U S WEST or other providers. In short, it cannot be reasonably said that McLeod somehow has been "prejudiced" or "disadvantaged", much less "unjustly" or "unreasonably" so. To the contrary, it would be U S WEST, which has expended much time, effort and resources to develop and deploy its VMS, that would be unjustly or unreasonably prejudiced or disadvantaged if it were forced to give up the fruits of such time, effort and resources by allowing McLeod (or any other competitor) to resell its enhanced service VMS.

Finally, although McLeod describes U S WEST's decision to discontinue VMS for resale as anti-competitive, the truth of the matter is that U S WEST is simply taking steps to be competitive. It is doing so by making U S WEST, which has expended the time, effort and resources to develop VMS, a more attractive service provider to customers in a very competitive telecommunications marketplace. In a competitive environment, U S WEST must utilize services such as VMS to differentiate its services from those offered by alternative providers like McLeod in order to effectively compete. If a customer decides that U S WEST offers better service than McLeod, in part because U S WEST offers its own VMS and McLeod does not, then it is only equitable to allow U S WEST to take advantage of that competitive edge. Having built the better mousetrap, it would be patently unfair for U S WEST to be disadvantaged and prejudiced by not being able to use the mousetrap (VMS) as a competitive advantage.

In short, forcing U S WEST to continue offering VMS for resale in South Dakota would unfairly undermine its capability to differentiate its services from those of its competitors. U S WEST should not be forced to provide VMS to McLeod or any other competitor for resale. As such, since McLeod was not unjustly or unreasonably "disadvantaged" or "prejudiced" by U S WEST's discontinuance of VMS for resale, U S WEST has not violated Section 11.

CONCLUSION

For the reasons set forth above, McLeod's petition should be answered to declare that U S WEST's discontinuance of VMS service to McLeod is not a violation of Section 11.

Respectfully submitted this 28th day of January, 2000

By: 

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CERTIFICATE OF SERVICE

I hereby certify that an original and ten (10) copies of the above was filed via facsimile and overnight delivery on this 28th day of January, 2000, to the following:

William Bullard, Jr., Executive Director
South Dakota Public Utilities Commission
500 East Capitol
Pierre, South Dakota 57501

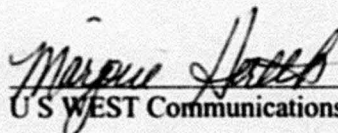
a true and correct copy was served via United States Mail, postage prepaid, on the following:

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US WEST Communications, Inc.

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE PETITION OF)	DECLARATORY RULING
MCLEODUSA TELECOMMUNICATIONS)	
SERVICES, INC. FOR A DECLARATORY)	TC99-113
RULING ON WHETHER THE)	
DISCONTINUANCE OF THE RETAIL SALE OF)	
VOICE MESSAGING SERVICE BY U S WEST)	
COMMUNICATIONS, INC. TO MCLEODUSA)	
VIOLATES SDCL 49-31-11)	

On December 2, 1999, the South Dakota Public Utilities Commission (Commission) received a Petition for Declaratory Ruling from McLeodUSA Telecommunications Services, Inc. (McLeod). McLeod requested that the Commission find that the discontinuance of the retail sale of Voice Messaging Service (VMS) by U S WEST Communications, Inc. (U S WEST) to McLeod for purposes of resale is an unjust and unreasonably discriminatory action by U S WEST in violation of SDCL 49-31-11.

Notice of the filing was given in the Commission's fax filing of December 8, 1999. On December 27, 1999, a Petition to Intervene was filed by U S WEST Communications, Inc. (U S WEST). This matter was noticed for the Commission's December 28, 1999, meeting for purposes of determining the procedural schedule. At its December 28, 1999, meeting, the Commission considered this matter. A discussion was held with counsel for the respective parties who represented that they were attempting to reach a stipulation of facts and would file briefs in the matter without the necessity of an evidentiary hearing if such a stipulation was reached. The Commission granted intervention to U S WEST and set the following procedural schedule: a stipulation of facts filed with the Commission by January 12, 2000; McLeod shall file its brief with the Commission by January 14, 2000; and U S WEST shall file its brief with the Commission by January 28, 2000.

At its February 11, 2000, meeting, the Commission voted unanimously to deny McLeod's request to find that U S WEST's discontinuance of the retail sale of VMS by U S WEST to McLeod violates SDCL 49-31-11.

Based on the record as submitted by the parties, the Commission makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. On January 12, 2000, the parties filed a Stipulation of Facts which is hereby incorporated by reference. In the Stipulation of Facts, U S WEST's and McLeod's Interconnection Agreement is incorporated by reference. Stipulation of Fact No. 4. The Stipulation also incorporates by reference the relevant catalog pages from U S WEST's South Dakota Local Exchange and Network Services Catalog. Stipulation of Fact No. 5. The catalog pages were attached to the Stipulation and referenced as Exhibit A.
2. The Stipulation of Facts failed to recite any facts as to the technical characteristics of U S WEST's VMS, and, instead, the parties relied on the description of VMS as contained in U S WEST's catalog pages.

3. U S WEST's catalog describes residence VMS as providing "an audio mailbox to record, store, retrieve, review, save and to handle audio messages for residence customers." Exhibit A, Exchange and Network Services Catalog, Section 10.12.1(A).

4. U S WEST's catalog describes business VMS as a service that answers "incoming calls, placed to the customer's telephone line, when the called number is busy or if the called number is not answered." *Id.* at Section 10.12.2(A)(1). The catalog states VMS "receives and saves the caller's messages for review by the customer." *Id.*

5. Telecommunications service is defined by statute, in pertinent part, as "the transmission of signs, signals, writings, images, sounds, messages, data or other information of any nature by wire, radio, lightwaves, electromagnetic means, or other similar means." SDCL 49-31-1(27).

6. The Commission finds that VMS is not a telecommunications service as defined by SDCL 49-31-1(27). As described in U S WEST's catalog, VMS does not involve the *transmission* of signs, signals, writings, images, sounds, messages, data or other information but instead is an audio mailbox that is able to record, store, retrieve, review, save, and handle audio messages. Although VMS is dependent on underlying telecommunications services, its function is to record calls that are transmitted by the underlying telecommunications system and this recording function is separate and distinct from the underlying telecommunications system. Thus, VMS is an information service, not a telecommunications service.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to SDCL 1-26-15, 49-31-1, 49-31-3, 49-31-7, and 49-31-11.

2. The Commission concludes that based on the definition of telecommunications service as defined by SDCL 49-31-1(27), VMS is not a telecommunications service as it does not involve the *transmission* of signs, signals, writings, images, sounds, messages, data or other information but instead is an information service that records audio messages for later review.

3. SDCL 49-31-11 prohibits a telecommunications company from unjustly or unreasonably discriminating when providing telecommunications services.

4. Based on the Commission's finding that VMS is not a telecommunications service, the Commission concludes that the prohibitions against unjust or unreasonable discrimination are not applicable since SDCL 49-31-11 only applies to telecommunications services.

It is therefore

ORDERED, that the discontinuance of the retail sale of VMS by U S WEST to McLeod for purposes of resale does not violate SDCL 49-31-11 because VMS is not a telecommunications service.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that this Order was duly entered on the 11th day of February, 2000. Pursuant to SDCL 1-26-32, this Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties.

Dated at Pierre, South Dakota, this 11th day of February, 2000.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By Arlene Halbo

Date: 2/11/00

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

Laska Schoenfelder
LASKA SCHOENFELDER, Commissioner