

**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.

<p style="text-align: center;">CERTIFICATE OF SERVICE</p> <p>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.</p> <p>By: <u><i>Alaine Kalbo</i></u></p> <p>Date: <u>2/11/00</u></p> <p style="text-align: center;">(OFFICIAL SEAL)</p>

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

Laska Schoenfelder
LASKA SCHOENFELDER, Commissioner

