BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

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ELIZABETH REATHA MONTOYA,	)	
CHARGING PARTY,	)	
	)	CASE NO. 0009009115
vs.	)	
	)	ORDER OVERRULING
LUCENT TECHNOLOGIES,	)	OBJECTION
RESPONDENT.	)	

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The above-captioned matter came before the Montana Human Rights Commission (Commission) on October 23, 2000. The matter was before the Commission for consideration of the charging party's objection to the Department's refusal to permit removal to the district court.

After reviewing the matter, the Commission finds that the Hearings Bureau, Department of Labor and Industry, properly denied charging party's Motion for Right to Sue and Determination of Conclusion of the Administrative Proceedings. On September 18, 2000, charging party requested in a letter to Terry Spear, Hearing Examiner, that he issue a right to sue letter to the parties because "it does not appear feasible that a hearing in this matter can be held on December 7, 2000, which is the current date of the hearing that is within the twelve month deadline." Subsequent to sending their letter request, the parties initiated a conference call with the Hearings Bureau to determine the status of their informal request. They were informed that a right to sue letter would not issue and that they would be required to sign an agreement to extend jurisdiction of the hearings unit if they desired a continuance of the hearing to a date after the twelve-month deadline. On October 10, 2000, Charging Party filed her Motion for Right to Sue and Determination of Conclusion of the Administrative Proceedings. On that same day, the Hearing Examiner issued his Order Denying "Right to Sue" Motion. Charging Party filed her Objection to Department's Refusal to Permit Removal to the District Court on October 12, 2000.

The Human Rights Act establishes the exclusive remedy for acts of discrimination in Montana, and a claim may not be entertained by a district court other than by the procedures specified in the Act. *Section 49-2-509(7), MCA.* Charging Party bases her request for dismissal on two erroneous premises. First, Charging Party reads Section 49-2-509(1)(a) to argue that the department must conclude administrative proceedings when either party requests a right to sue letter and the department has completed its "investigation of the complaint filed pursuant to 49-2-305." An investigation pursuant to 49-2-305 is a discrimination in housing case. Charging party has not filed a housing discrimination complaint. Her argument fails here. Second, charging party argues that the department may not refuse to conclude administrative proceedings if "more than 30 days have elapsed since service of notice of hearing under 49-2-505, unless the department fails to schedule a hearing to be held within 90 days of service of notice of hearing." Charging party argues that she filed her request for a right to sue letter within thirty days of receipt of the Notice of Hearing and that the Notice did not provide a hearing to be held within 90 days of service of notice of hearing, but, rather, within 105 days from the Notice of Hearing. Charging party errs in this, too.

The Notice of Hearing, dated August 25, 2000, was served on Charging Party on September 10, 2000. The order setting the contested case hearing date for December 7, 2000, was issued on September 15, 2000. December 7 is the 89th day from the date of service of Notice of Hearing. Thus, the department properly scheduled a hearing within the 90 day period mandated by Section 49-2-509(2)(b) and is not required to conclude administrative proceedings. Accordingly, the Hearing Examiner properly denied the motion.

IT IS HEREBY ORDERED, that the Hearings Bureau's Order Denying "Right to Sue" Motion is affirmed and charging party's Objection to Department's Refusal to Permit Removal to the District Court is overruled.

Dated this __ day of «month», «year».

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Gloria "Patt" Etchart, Chair, Montana Human Rights Commission

CERTIFICATE OF SERVICE

The undersigned employee of the Human Rights Bureau certifies that a true copy of the foregoing **«document name»**was served on the following persons by U. S. Mail, postage prepaid on the day of «month», «year».

«ADDRESS»

_____.