

DECISION MEMORANDUM

**TO: COMMISSIONER REDFORD
COMMISSIONER SMITH
COMMISSIONER KEMPTON
COMMISSION SECRETARY
COMMISSION STAFF**

**FROM: DON HOWELL
DEPUTY ATTORNEY GENERAL**

DATE: AUGUST 8, 2008

**SUBJECT: STAFF RECOMMENDATIONS TO AMEND THE COMMISSION'S
RULES OF PROCEDURE, IDAPA DOCKET NO. 31-0101-0801 (RUL-U-
08-01)**

In this decision memorandum the Staff is recommending that the Commission consider amending several of its Rules of Procedure. The Commission last updated its Rules of Procedure five years ago. The Staff also solicited suggestions from utilities and members of the utility bar. The proposed amendments are attached for your review. Most of the proposed changes are to: (1) make housekeeping changes (zip codes, e-mails and references to updated computer storage medium); (2) improve the clarity or readability of the rules; (3) remove ambiguity; (4) include requirements currently contained in Orders or other rules in these rules; and (5) reposition some rules. The substantive changes to the Commission's rules are discussed before each rule in chronological order below.

THE PROPOSED RULE CHANGES

Rule 12: Staff recommends the Commission make housekeeping changes to this rule that are self-explanatory.

012. OFFICE -- OFFICE HOURS -- FAX NUMBER -- MAILING, ELECTRONIC AND STREET ADDRESSES -- DROP BOX (RULE 12).

The principal office of the Commission is in Boise, Idaho. This office is open from 8 a.m. to 5 p.m., except Saturday, Sunday and legal holidays. The Commission's telephone number is (208) 334-0300. The hearing or speech impaired may reach the Commission through the Idaho

Telecommunications Relay Service by dialing 711. The Commission has no drop box for filing documents after the close of business. (3-16-04)()

01. Fax Number, Mailing and Street Addresses. The Commission's FAX number is (208) 334-3762. The Commission's mailing address is: Idaho Public Utilities Commission, PO Box 83720, Boise, Idaho 83720-0074. The street address of the Commission is: 472 West Washington, Boise, Idaho 83702-5983~~18~~. All documents filed in all proceedings must be filed with the Commission at one (1) of these addresses. (4-5-00)()

02. ~~Electronic Address~~ Internet Homepage. The Commission's electronic address for its Internet homepage is www.puc.state.id.us idaho.gov. (4-5-00)()

03. Electronic Address. The Commission's electronic address for filing authorized documents per Subsections 061.02 through 061.04 is: secretary@puc.idaho.gov. ()

Rule 14: The Staff is proposing that the Commission add section headings to improve the clarity and readability of this rule.

**014. COMMISSION SECRETARY -- COMMUNICATIONS WITH COMMISSION --
TIMELY FILING (RULE 14).**

01. The Commission Secretary. The Commission Secretary is the custodian of all public files of the Commission and is responsible for service of all orders and notices of the Commission and of all complaints filed with the Commission. Unless otherwise directed by order, the Commission Secretary issues all official notices of the Commission. All written communications and documents that are intended to be part of an official Commission record (other than a hearing record) must be filed with the Commission Secretary. (7-1-93)()

02. Timely Filing. Unless otherwise provided by statutes, these rules, order or notice, documents are considered filed when received by the Commission Secretary, not when mailed or otherwise transmitted. ()

03. Case Information. Information concerning proceedings before the Commission or the status of any matter before the Commission is available from the Commission Secretary or the Commission's Internet homepage. ()

Rule 54: The Consumer Staff has rewritten Rule 54 to provide better clarity regarding the required contents of formal complaints. In addition, Subsection 05 is added to reflect that it is the Commission that determines how formal complaints should be processed and to encourage the informal resolution of complaints.

054. FORMAL COMPLAINTS -- DEFINED -- ~~FORM AND CONTENTS AND~~ PROCESS (RULE 54).

All pleadings charging utilities or other person(s) with acts or omissions under law administered by the Commission are called "formal complaints." Formal complaints must be in writing and:

(7-1-93)()

01. ~~Be in Writing. Name the Respondent.~~ Name the Respondent. State the name of the utility or person complained against (the respondent).

(7-1-93)()

02. ~~Fully State the AFacts.~~ Fully State the AFacts. Fully state the ~~acts or things done or omitted to be done by the persons complained against by reciting the facts~~ constituting the acts or omissions of the utility or person against whom the complaint is filed and the dates when ~~they~~ the acts or omissions occurred.

(7-1-93)()

03. ~~Refer to Statutes, Rules, Orders or Other Controlling Law Involved~~ Refer to Statutes, Rules, Orders or Other Controlling Law Involved Applicable Provisions. Refer to the specific provision of statute, rule, order, notice, tariff or other controlling law that the utility or person has violated.

(7-1-93)()

04. ~~Pray for State the Relief Desired.~~ Pray for State the Relief Desired. State what action or outcome should be taken to resolve the complaint.

(7-1-93)()

05. ~~Name the Respondent. Process.~~ Name the Respondent. Process. State the name of the person complained against (the respondent). ~~The utility, carrier or other person against whom the formal complaint is directed may be served by the complainant. The Commission encourages the use of informal proceeding (see Rules 21 through 26) to resolve or settle formal complaints. The Commission shall determine how a formal complaint should be processed, e.g., issuance of a summons, open an investigation, informal procedure with Staff. The Commission Secretary will~~ may serve a copy of the formal complaint upon the utility or person to which the formal complaint is directed.

(7-1-93)()

Rule 61. This rule discusses how many documents must be filed with the Commission and the manner of filing documents with the Commission. In particular, the Staff is recommending that a new Subsection 02 be included to reflect that discovery-related documents (notice of taking deposition, production requests, written interrogatories, requests for admission, answers to discovery, explanations in lieu of discovery, and objections to discovery) shall be filed in either printed or electronic format. The most common suggestion from practitioners was to allow electronic filing. This rule change would allow discovery documents to be filed and served electronically.

As the Commission is aware, information obtained in discovery is not included in the Commission's hearing record unless a party moves to do so. Consequently, allowing parties to file electronic will reduce the amount of paper documents to be filed with the Commission Secretary. For those parties unable to transmit discovery documents as either attachments to e-mails or on CD-ROM disks, the rule still allows for the filing of printed discovery.

Subsection 03 has been modified to restrict the type of documents that may be filed via facsimile. The subsection would also allow electronic or FAX filings for documents "requiring emergency or immediate action by the Commission. . . ."

**061. FILING DOCUMENTS WITH THE COMMISSION -- NUMBER OF COPIES --
DISCOVERY -- FACSIMILE AND ELECTRONIC FILING TRANSMISSION (FAX)
(RULE 61).**

The following numbers of documents ~~must~~ shall be filed with the Commission Secretary:

- (7-1-93)()
- 01. Printed Filings.** When filing printed material, (4-5-00)()
- a.** In utilities cases (other than those cases specified Subsections 061.01.b. and 061.01.c. below): (3-16-04)()
- i.** Pleadings (applications, petitions, complaints, motions, answers and consent agreements)--an original and seven (7) copies. (7-1-93)
- ii.** Briefs, proposed orders, statements of position, and exceptions under Rule 312-- eight (8) copies. (4-5-00)
- iii.** Prepared testimony and exhibits--nine (9) copies (one (1) copy designated as reporter's copy) plus ~~computer disk~~ CD-ROM as required by Rule 231.05. (7-1-93)()

iv. ~~Discovery-related documents (notice of deposition, production requests, written interrogatories, requests for admission, answers to discovery, explanations in lieu of discovery under Rule 225 and objections to discovery) three (3) copies except as requested pursuant to Rule 229.~~ (7-1-93)

- b. Security issuance cases: (4-5-00)
 - i. Pleadings--an original and four (4) copies. (7-1-93)
 - ii. Other documents except for discovery-related documents--~~five (5)~~ three (3) copies. (7-1-93)()
 - iii. ~~Discovery-related documents three (3) copies.~~ (7-1-93)
- c. Telecommunication interconnection agreements: (3-16-04)
 - i. Pleadings--an original. (3-16-04)
 - ii. All other documents--two (2) copies. (3-16-04)

02. Filing Discovery. Discovery-related documents (notice of taking deposition, production requests, written interrogatories, requests for admission, answers to discovery, explanations in lieu of discovery under Rule 225, and objections to discovery) shall be filed in either printed or electronic format. ()

a. If printed filing – three (3) copies. ()

b. If electronic filing – the discovery document(s) may be submitted as attachments to an e-mail or placed on a CD-ROM and the CD-ROM is filed. The electronic discovery documents shall be in a computer searchable form of Adobe Acrobat in portable document format (PDF) without password protection. The transmitting e-mail or CD-ROM shall be labeled with the case number, case name, and the name of the person and the party submitting the discovery. ()

023. FAX and Electronic Filings. ~~Pleadings (including supporting affidavits, memoranda, etc.) not exceeding ten (10) pages in length, notice of taking depositions, n~~ Notices of withdrawal of party or of withdrawal of representative, stipulations, and documents requiring urgent emergency or immediate action by the Commission may be filed with the Commission Secretary as an attachment to an e-mail or by facsimile transmission (FAX). The attached electronic document shall be in a computer searchable form of Adobe Acrobat (PDF) without password protection. Whenever any such document is filed by electronic mail or by FAX, originals the required number of printed documents per Subsection 061.01 must be delivered to

the Commission by overnight mail on the next working day. The use of electronic mail or FAX is prohibited to file prepared testimony and exhibits, ~~requests for or answers to discovery-related documents (other than notices of taking deposition)~~, or any other documents except as authorized by this paragraph. (7-1-93)()

034. Reducing the Number or Changing the Form of Copies Filing. The Commission Secretary is authorized to reduce the number of required copies or allow electronic copies to be filed in lieu of a printed original or copies. (3-16-04)()

Rule 62: Rule 62.01.a. has been modified to allow persons to submit documents printed on both sides of a page. Staff believes that this will allow parties to conserve the amount of paper filed with the Commission and reduce the storage space for the files.

062. FORM OF DOCUMENTS (RULE 62).

01. Information to be Listed. All documents listed in Rule 61 submitted by a party and intended to be part of the record must: (7-1-93)

a. Be submitted on white eight and one-half inch by eleven inch (8 1/2" by 11") paper copied on either one (1) side only or both sides (duplexed); (7-1-93)()

b. State the case caption, case number and title of the document; (7-1-93)

c. Include on the upper left corner of the first page: (3-16-04)

i. The name(s); (3-16-04)

ii. Mailing, street and e-mail address(es); and (3-16-04)

iii. Telephone and FAX number(s) of the person(s) filing the document or the person(s) to whom questions about the document can be directed; and (3-16-04)

d. Have at least one-inch (1") left and top margins. (7-1-93)

02. Example. These documents complying with this rule will be in the following form:

Name of Representative (State Bar No. if applicable)

Mailing Address of Representative

Street Address of Representative (if different)

Telephone Number of Representative

FAX Number of Representative (if there is one)

E-mail address (if available)

Attorney/Representative (for Name of Party)

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSIONS

(Title of Proceeding)
)
)
)

CASE NO. ABC-X-XX-XX

TITLE OF DOCUMENT (3-16-04)()

03. Identification of Parties. Every document filed under this rule must identify the party filing it in its title. The party must be identified by both the party's designation as a party (e.g., intervenor) and the party's name. For example, the Intervenor ABC Company would title its motion to strike as "Motion to Strike of Intervenor ABC Company." A short title of the document must appear at the bottom left corner of each page of the document. For example, the short title of the motion above could be: "ABC's Motion to Strike." (7-1-93)

Rule 63: Staff proposes that the Commission modify this rule by providing updated paragraph headings and denoting that the Commission may direct or that the parties may agree to accomplish service among themselves by electronic mail. In addition, Subsection 03 recognizes that service of discovery documents among parties to a case will be accomplished by electronic mail (as attachments to an e-mail). For parties without electronic mail, service shall be made by overnight delivery.

063. SERVICE ON PARTIES AND OTHER PERSONS (RULE 63).

01. Service in General. All documents referred to in Rule 61 (except as noted below) must be served upon the representatives of every party of record concurrently with filing with the Commission Secretary. When a document has been filed with the Commission Secretary by FAX or electronic mail, it must be served upon all other parties with FAX facilities or by FAX electronic mail, respectively. ~~and upon the remaining parties~~ For parties without electronic capability, service shall be made by overnight mail, hand delivery, or the next best available service if these services are not available. ~~The Commission may direct that service be accomplished by electronic mail.~~ The Commission may direct that some or all of these documents be served on interested or affected persons who are not parties. The Commission Secretary's notice of parties (and revisions to it) will list all persons whom the parties must serve and their representatives as of the date of the notice or its revision. (3-16-04)()

02. Service by Electronic Mail. The Commission may direct or the parties may agree that service among parties be accomplished by electronic mail. ()

03. Service of Discovery. The service of discovery documents on parties shall be accomplished by electronic mail (as attachments to e-mail). For parties without electronic mail capability, service shall be made by overnight mail, hand delivery, or the next best available service if these services are not available. See Rule 229. ()

Rule 67: Staff is recommending two changes to this rule. First, the Commission Secretary's Staff is recommending that documents containing trade secrets or other confidential information be reproduced on yellow paper only. The existing rule in Subsection 67.02.a. currently provides that such information may be reproduced on "any colored paper." For administrative ease, the Staff recommends that a specific color be identified so that confidential information will be readily apparent. Staff also indicates that in its experience over the last five years, confidential information has always been submitted on yellow paper.

The other change recommended in this area is to delete the reference to a 3.5" diskette and replace this storage medium with a CD-ROM. The use of CD-ROMs for the storage of documents is much more prevalent and it can store much more information than the 3.5" diskettes.

067. INFORMATION EXEMPT FROM PUBLIC REVIEW -- DEFINITIONS -- FORM -- PROCEDURES (RULE 67).

01. Definitions. (4-5-00)

a. "Trade secrets" filed with the Commission are exempt from public inspection, examination, and copying pursuant to Section 9-340D, Idaho Code. Trade secrets means information, including a formula, pattern, compilation, program, computer program, device, method, technique, process, or unpublished or in progress research that: (4-5-00)

i. Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and (4-5-00)

ii. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. (4-5-00)

b. "Confidential information" means information, documents, or records filed with the Commission that are specifically exempt from public inspection, examination and copying pursuant to Sections 9-340A through 9-340F, Idaho Code. (4-5-00)

02. **Form.** In addition to the requirements of Rule 62 (except Subsection 062.01.a.), information that is alleged to be trade secrets, confidential or otherwise exempt from public disclosure shall be served upon the Commission and other parties who have entered into a protective agreement pursuant to Subsection 067.04 in either printed or electronic format. (4-5-00)

a. If in printed form, the page(s) containing the trade secret or confidential information shall be reproduced on ~~any colored~~ yellow paper ~~other than white~~. Each page shall be marked as "TRADE SECRETS" or "CONFIDENTIAL." (4-5-00)()

b. If in electronic form, the trade secret or confidential information shall be reproduced separately on a ~~DOS formatted three and one half (3.5") inch (one point forty four (1.44) megabyte diskette)~~ CD-ROM or other electronic storage format approved by the Commission Secretary; and not included with other material electronically filed. Each ~~diskette~~ CD-ROM or other storage device containing trade secret or confidential information shall be clearly identified with the case caption, case number, title of document and marked as "TRADE SECRETS" or "CONFIDENTIAL." (3-16-04)()

03. **Procedure.** Whenever a party believes that information contained in pleadings or other documents are trade secrets, confidential or otherwise exempt from public disclosure, the attorney of such party designated by Rule 41 must state in writing that the information is protected by law from public inspection, examination or copying, citing the specific grounds and legal authority for that assertion. Documents containing trade secrets or confidential information shall be separated from documents not containing trade secrets or confidential information. Trade secrets or confidential information contained in documents will be removed and replaced with a page marked: "This page allegedly contains trade secrets or confidential material and is separately filed." All materials for which no assertion of protection from public inspection, examination and copying is made will be placed in files available for public inspection. Trade secrets, confidential information and other records exempt from public inspection shall be separately stored in a secured location with limited access and safeguarded from unauthorized disclosure. (4-5-00)

04. Protective Agreements. In proceedings before the Commission involving trade secrets or other confidential information, parties may enter into protective agreements to facilitate and safeguard the exchange of necessary information. Protective agreements may include procedures for copying, exchanging, serving, safeguarding, or challenging the characterization of trade secrets or confidential information. The Commission shall not be a party and will not be bound by the terms of a protective agreement. (4-5-00)

Rule 114: In 1996, the Commission issued Order No. 26665 setting out the application requirements for competitive local exchange carriers (CLECs). Staff is recommending that the requirements of this procedural Order now be incorporated in a Commission rule.

114. APPLICATION FOR NEW COMPETITIVE LOCAL EXCHANGE CARRIER (CLEC) – FORM AND CONTENT (RULE 114).

The Commission issues Certificates of Public Convenience and Necessity to competitive local exchange carriers (CLECs) seeking to provide local exchange services in Idaho. The Commission uses the certification process to register and review applications to provide local telecommunications services. See Commission Order No. 26665 issued November 7, 1996.

Each CLEC application shall include the following information: ()

01. Name, Address and Form of Business. ()

a. If the applicant is the sole proprietor, provide the name and business address of the applicant and the business name of the sole proprietorship. ()

b. If the applicant is a partnership, provide a list of the names and business addresses of all the partners, and the business name of the partnership. ()

c. If the applicant is a corporation, provide: ()

i. A short statement of the character of public service in which it is engaged; ()

ii. The name of the state in which it is incorporated; ()

iii. Its principal business address and its principal address within Idaho; ()

iv. A certified copy of its articles of incorporation; ()

v. The names and addresses of the officers and directors of applicant; ()

vi. The names and addresses of subsidiaries owned or controlled by applicant; ()

vii. If not incorporated in Idaho, a certificate of good standing issued by the applicable secretary of state, and the name and address of registered agent for service in Idaho; and ()

viii. The name and address of any corporation, association, or similar organization holding a five percent (5%) or greater ownership or a managerial interest in the applicant, and indicate the amount and character of the ownership interest. Include a copy of any management agreement with the application. ()

02. Services and Territory. The application shall include: ()

a. A written description of customer classes and customer services that the applicant proposes to offer to the public. The application shall indicate the date on which the applicant proposes to begin construction or anticipates it will begin to provide service in Idaho. ()

b. A description sufficient for determining whether service is to be offered in a particular location and the names of incumbent local exchange corporations (ILECs) with whom the proposed utility is likely to compete. The application shall include: a description of the intended manner of service, e.g., resold services or facilities-based services; and a general description of the property owned or controlled by applicant. ()

c. A map of reasonable size and detail showing where the applicant is proposing to provide service including exchanges (if different from existing exchanges), rural zones, and local calling areas. If the service area is identical to an incumbent LEC's service area, then applicant may refer to the incumbent's service area. ()

03. Financial Information. ()

a. The application shall provide the current detailed balance sheets, including a detailed income and profit and loss statements of applicant reflecting current and prior year balance for the twelve (12) months ending as of the date of the balance sheet, or if not readily available, for the period since the close of the preceding calendar year. If a balance sheet and income statement are not available, the applicant shall submit financial data sufficient to establish it possesses adequate financial resources to provided the proposed services. ()

b. The application shall include the latest annual report, if any. ()

04. Tariffs and Price Lists. The application shall include proposed initial tariffs or price sheets setting forth rates, rules, terms, and regulations applicable to the contemplated service. Initial tariffs and price lists filings shall be in an electronic form as well as paper. The

tariffs and price lists in electronic format will be in computer searchable Adobe Acrobat (PDF), or submitted on a CD-ROM or other format as prescribed by the Commission Secretary. ()

05. Tariff and Customer Contact. The application shall include the name, address, and telephone number for those persons responsible for tariff and price list questions, as well as customer complaints and inquiries. The application shall state the toll-free telephone number for customer inquiries and complaints. ()

06. Interconnection Agreements. The application shall state whether the applicant has initiated interconnection and negotiations and, if so, when and with whom. Include copies of any interconnection contracts which have been completed for the provision of telecommunication services. ()

07. Compliance with Commission Rules. The application shall contain a written statement that the applicant has reviewed all of the Commission's rules and agrees to comply with them, or include a request for waiver of those rules believed to be inapplicable. ()

08. Conservation of Telephone Numbers. The application shall contain a written statement acknowledging that non-paging telecommunication carriers with telephone numbering resources in Idaho shall be subject to numbering conservation measures including mandatory one thousand (1,000) block pooling. See Commission Order No. 30425. All CLECs shall evaluate their numbering resources and donate to the numbering resource pool unused one thousand (1,000) number blocks and one thousand (1,000) number blocks that have fewer than ten percent (10%) of the telephone numbers assigned. Applicable carriers shall also file the necessary utilization reports with NeuStar and biennially report their number resource utilization/forecast (NRUF) data at the one thousand (1,000) block level for each rate center within their service territory. The Federal Communications Commission has appointed NeuStar to manage the assignment and conservation of telephone area codes and telephone numbers in North America. ()

Rule 122: The Staff is proposing that Subsection 02 be amended to improve the clarity of the language and the examples of exceptions.

122. NOTICE OF INTENT TO FILE A GENERAL RATE CASE (RULE 122).

01. Which Utilities Must File Notice. Utilities with annual gross revenues from retail customers in the State of Idaho exceeding three million dollars (\$3,000,000) must file with

the Commission a "notice of intent to file a general rate case" at least sixty (60) days before filing a general rate case. If the general rate case described in the notice is not filed within one-hundred twenty (120) days after filing of the notice of intent to file a general rate case, by operation of this rule a notice of intent to file a general rate case will be considered withdrawn unless it is supplemented with a written statement that the utility still intends to file a general rate case of the kind described in its notice of intent to file a general rate case. (7-1-93)

02. Exceptions for Trackers, Etc or Annual Cost Adjustments. This rule applies only to general rate increases. Examples of cases outside the scope of this rule include (but are not limited to) fuel cost adjustments (e.g., PGA), power cost adjustments (PCA), commodity or purchased power tracker rate increases, emergency or other short-notice increases caused by disaster or weather-related or other conditions unexpectedly increasing a utility's expenses, rate increases designed to recover governmentally-imposed increases in costs of doing business, such as changes in tax laws or ordinances, or other increases designed to recover increased expenses arising on short notice and beyond the utility's control. (4-5-00)()

Rule 125: Rule 125 already exists as Rule 102 to the Commission's Utility Customer Information Rules (IDAPA 31.21.02.102). The Staff is recommending that Utility Customer Information Rule 102 be moved to the Commission's Procedure Rules as Rule 125. Eventually, the Staff would propose to eliminate the Commission's Customer Information Rule (IDAPA 31.21.02).

125. NOTICES TO CUSTOMERS OF PROPOSED CHANGES IN RATES (RULE 125).

01. Customer Notice of a Change in Rates. If a utility is requesting a rate increase, the utility shall issue a customer notice to each customer. The customer notice shall include a brief explanation of the utility's need for additional revenue and the dollar amount requested. The notice shall give the proposed overall percentage change from current rates as well as the proposed percentage increase in revenue for each major customer class. The customer notice shall make it clear that the application is a proposal, subject to public review and a Commission decision. It shall also inform customers that a copy of the utility's application is available for public review at the offices of both the Commission and the utility, and on the Commission's homepage. ()

02. Timing of Notice for Trackers or Annual Cost Adjustments. Tracker adjustments occasioned by federal action may be brought to the attention of customers in compliance with this rule after approval by the Commission. All other tracker or annual cost adjustment cases remain subject to the requirements of advance notice contained in this rule. ()

03. Distribution of Customer Notices. The customer notices referred to in Subsection 125.01 may be mailed to customers as bill stuffers over the course of a billing cycle or may be contained in additional comment pages to the customer's monthly bill. If additional comment pages are used, the information required by this rule is to be clearly identified, easily understood, and pertain only to the proposed rate change. ()

04. Press Release. In instances covered by Subsection 125.01, the utility shall also send a press release containing, at minimum, the same information presented in the customer notices to all newspapers, radio, and television stations listed on the Commission's news organization list for that utility. The press releases shall be mailed or delivered simultaneously with filing of the application. ()

05. Filing of a Press Release and Customer Notice. A copy of the press release and customer notice shall be filed with the application. ()

06. Purposes and Effects of This Rule. The purposes of Subsections 125.01 through 125.05 of this rule are to encourage wide dissemination to customers of information concerning proposed rate changes for utility services. It is not a purpose of these subsections to create due process or other procedural rights in customers by expanding, contracting, or otherwise modifying the notice and due process rights of customers under the Public Utilities Law and the Commission's Rules of Procedure, IDAPA 31.01.01. Accordingly, Subsections 125.01 through 125.05 of this rule create no individual procedural rights in any customer for notice that would give rise to a due process or other procedural claim cognizable by the Commission, but failure to comply with Subsections 125.01 through 125.05 of this rule can be grounds for returning an application for incompleteness. ()

Rules 126 and 127: There are no changes to these two rules other than being renumbered. Rule 126 was the former Rule 135.

**135126. APPLICATION TO APPROVE INTERCONNECTION AGREEMENTS
(RULE 135126).**

01. Uncontested Agreements. A telephone corporation may file an application for the Commission to approve voluntarily negotiated, adopted or amended interconnection agreements pursuant to Section 252 of the federal Telecommunications Act of 1996. The Commission acts on adopted or negotiated interconnection agreements and uncontested amendments to previously approved agreements with the assistance of a written ex parte recommendation of the Commission Staff. (3-16-04)

02. Contested Agreements. Petitions to arbitrate, mediate or otherwise resolve interconnection disputes between or among telecommunication carriers shall be processed under Rule 53. (3-16-04)

**125127. PUBLIC WORKSHOPS ON APPLICATIONS TO INCREASE RATES
(RULE 125127).**

01. Public Workshop. When a public utility files an application to increase any rate, fare, toll, rental or charge regarding any classification or service, the Commission will determine if the staff should conduct a public workshop. The purpose of any workshop is for the staff to dispense information concerning the utility's application and to receive written or oral comments from the public prior to the staff filing testimony or comments in the case. (3-16-04)

02. Notice and Location of Workshop. Notice of the public workshop shall be disseminated a minimum of seven (7) days prior to the workshop to newspapers of general circulation and radio and television stations in the affected area. The Commission shall determine the location for the workshop within the area served by the public utility. The notice shall also be posted on the Commission's website. (3-16-04)

03. Exemptions. The requirements of Subsection ~~125.01~~ 127.01 shall not apply to applications regarding uniform statewide surcharges under Sections 56-904, 62-610 and 62-610F, Idaho Code, or to utility tariff advices. (3-16-04)()

Rule 132: Rule 132 changes the Commission Secretary's e-mail address and deletes obsolete references to old computer storage formats.

132. NUMBER OF TARIFF COPIES FILED (RULE 132).

The Commission encourages public utilities to file their tariff schedules via electronic mail.

(3-16-04)

01. Electronic Tariffs. For electronically filed tariffs, each utility shall submit its tariff schedules prepared in searchable Adobe Acrobat in portable document format (PDF) as an attachment to an e-mail message sent to the Commission Secretary at: secretary@puc.state.id.usidaho.gov. Electronic tariff schedules may also be submitted as PDF documents on appropriately formatted ~~three and one-half (3.5) inch diskette, zip disk, or CD-ROM~~ or other electronic storage format approved by the Commission Secretary. (3-16-04)()

02. Printed Tariffs. To file printed tariffs, each utility shall file an original and two (2) copies of their tariff schedules with the Commission Secretary. (3-16-04)

03. Approval. The Commission will stamp its approval in the space provided on each copy of an approved tariff, placing the original in its files and returning one (1) copy to the public utility. (3-16-04)

Rule 133: As indicated in Subsection 02, utilities are required to serve their Commission-approved tariffs on all parties to a case where a tariff change was required. Commission Staff is recommending that the last sentence of Subsection 02 be deleted because it is a redundant administrative task.

133. TARIFFS SUBMITTED PURSUANT TO ORDER (RULE 133).

01. Order May Require Submission of Tariffs. When the Commission directs or authorizes by order that certain tariffs be filed, the order may require the tariff submissions to the Commission to be accompanied by appropriate explanatory documents, summaries, workpapers, or similar material. When the Commission authorizes a utility to file new tariffs pursuant to order in a general rate case, the Commission may require the utility to file a complete set of tariffs containing both pages with changed rates and charges and those without. (7-1-93)

02. Staff Review of Tariffs Filed Pursuant to Order. When a utility files tariffs with the Commission pursuant to an order of the Commission in a proceeding in which other persons are party, the responsibility for reviewing the tariff submission to determine whether it complies with the Commission's order is upon the Commission Staff, which shall promptly

report to the Commission whether the tariffs do comply. The review of tariffs filed pursuant to order is an ex parte, ministerial responsibility of the Commission Staff. Tariffs may be approved in the minutes of the Commission's decision meetings or by minute entry after Staff review without further order. ~~After approval, the utility must promptly serve the tariffs on all parties.~~

(3-16-04)()

03. Motions With Regard to Tariffs Submitted Pursuant to Order. If the Commission has approved tariffs, parties or persons contending that approved tariffs are inconsistent with the Commission's orders may file appropriate motions asking that approval be reviewed.

(7-1-93)

Rule 134: Commission Staff is recommending that Subsection 03 be updated to improve its clarity and reflect existing practices.

134. TARIFF ADVICES (RULE 134).

01. Tariff Advices Authorized. Public utilities may file tariffs adding new or modifying existing services, providing for new or modified rules, or otherwise making minor changes to existing schedules by tariff advice. The tariff advice must include a letter of transmittal from the utility listing all tariff pages changed or added by the tariff advice and stating briefly the reason for filing the tariff advice. If existing tariffs are changed, the advice must contain two (2) copies of each changed page: one (1) showing all the changes with appropriate symbols for deletions, additions, etc., and one (1) showing the pages after the changes as they will appear in the proposed new tariffs.

(7-1-93)

02. Filing of Tariff Advice. No tariff advice can be effective unless notice is given to the Commission and the public pursuant to Sections 61-307, 61-622 or 61-623, Idaho Code. If the tariff advice proposes an effective date fewer than thirty (30) days after it is filed, the effective date of the tariff is delayed until thirty (30) days after the tariff advice is filed by operation of Sections 61-307, 61-622 or 61-623, Idaho Code, unless the Commission by order approves an earlier effective date for good cause shown. In the absence of an order approving or suspending the tariff advice, the tariff advice not suspended or approved goes into effect thirty (30) days after filing or on the proposed effective date, whichever is later. If no effective date is proposed for the tariff advice, the tariff advice does not go into effect until approved by order or

minute entry. If a tariff advice is suspended, the Commission will open a formal proceeding and treat the tariff advice as an application. (7-1-93)

03. Ex Parte Action. Ordinarily, the Commission acts upon tariff advices with the assistance of an written ex parte recommendation of the Commission Staff. ~~Every recommendation of the Commission Staff is required to specifically state whether it is appropriate to act upon the advice without notice of application being generally distributed to the public. The Commission acts upon tariff advices at its open meetings.~~ (7-1-93)()

Rules 202 and 204: The Commission's existing Modified Procedure Rule 202 does not reflect that an applicant or moving party has the right to file a reply after comments are received. Based upon a utility's suggestion, the Commission Staff is recommending that the rule be modified to reflect that an applicant or moving party may file a reply. Rule 204 is being updated to reflect that replies are permitted when the Commission processes a case under Modified Procedure.

202. NOTICE OF MODIFIED PROCEDURE (RULE 202).

01. Notice of Modified Procedure. When the Commission finds that it may not be in the public interest to hold a hearing in a matter, notice of modified procedure will be issued. It will: (7-1-93)

a. Describe the issues presented in the proceeding, (7-1-93)

b. Summarize the moving party's justification for the proposed changes and its position, (7-1-93)

c. State that the Commission finds that it may be in the public interest not to hold a hearing in the proceeding and will not do so unless it receives written protests or comments opposing the use of modified procedure and stating reasons why modified procedure should not be used, and (7-1-93)

d. Establish the deadlines for filing written protests or comments, and a reply by the moving party with the Commission. (7-1-93)()

02. Distribution of Notice. Copies of the notice of modified procedure will be provided to all interested persons, including newspapers, municipalities, counties, and chambers of commerce located within the territorial scope of the application, petition or complaint whose

readers, citizens or members may be affected by the proceedings and to all parties. Unless otherwise provided by the notice of modified procedure, all interested persons will have at least twenty-one (21) days from the date of the notice to file a written protest or comment. (4-5-00)

204. ACTION BY COMMISSION (RULE 204).

If no protests, supports or comments are received within the deadline, the Commission may consider the matter and enter its order without a hearing. If protests, supports, or comments or a reply are filed within the deadlines, the Commission will consider them and may set the matter for hearing or may decide the matter and issue its order on the basis of the written positions before it. (7-1-93)()

Rule 225: Based upon a practitioner's suggestion, Staff is recommending that the time for answering discovery requests be shortened from 28 days to 21 days. Shortening the answer period would accelerate the discovery process and parties could still agree to longer periods on a case-by-case basis.

225. PRODUCTION REQUESTS OR WRITTEN INTERROGATORIES AND REQUESTS FOR ADMISSION (RULE 225).

01. When Requests May Be Used. Production requests or written interrogatories and requests for admission may be taken in accordance with the Idaho Rules of Civil Procedure for any purpose allowed by statute, Idaho Rule of Civil Procedure, rule of the Commission, order or notice, except: (7-1-93)

a. Production requests or written interrogatories should not be used to obtain statements of opinion or policy not previously written or published and may be objected to on that ground; and (7-1-93)

b. Requests for admission concerning a matter of opinion or policy or the application of law, order or rule to fact may be denied generally and the reasons for denial required to be discovered by deposition rather than by request for admission, but a request for admission on any matter of opinion or policy or application of law to fact on an uncontested matter must be answered. (7-1-93)

02. Form of Requests. The caption of a production request or written interrogatory and of a request for admission must identify the party making the request or interrogatory, the party to whom the request or interrogatory is directed, and the number of the request or interrogatory to that party. Separate questions within a production request or written interrogatory or within a request for admission must be numbered consecutively within the request or interrogatory and consecutively with earlier production requests or written interrogatories and requests for admission, respectively, from the same party submitting the questions to the same party answering them. For example, if the last question of the Third Production Request of the Commission Staff to XYZ Electric Company is numbered 33, the first question of the Fourth Production Request of the Commission Staff to XYZ Electric Company must be numbered 34. But, if the Staff's next production request is its first to intervenor ABC Company, that request must begin with question one (1) to that intervenor. (7-1-93)

03. Time for Objection and Answer. Unless otherwise provided by order, notice, or these rules, or pursuant to agreement with or acquiescence of the answering party, parties have at minimum fourteen (14) days to object or explain why a question cannot be answered according to this rule and ~~twenty-eight~~ one (281) days to answer. (7-1-93)()

04. Numbers of Requests. The number of production requests or written interrogatories and of requests for admission and individual questions or subparts in them may be limited by order, notice or rule of the Commission, but are not limited by the provisions of the Idaho Rules of Civil Procedure. (7-1-93)

Rule 229: The proposed changes to Rule 229 are prompted by changes to the discovery procedures in Rules 61 and 63. In addition, Staff believes it is appropriate to delete the last part of this rule since the Staff will be able to reproduce additional copies of discovery because of the electronic format.

229. FILING AND SERVICE OF DISCOVERY AND RELATED DOCUMENTS (RULE 229).

~~Three (3) legible copies of a~~ Notices of deposition, production requests or written interrogatories, requests for admission, answers to production requests or written interrogatories, answers to requests for admission, explanations in lieu of answers under Rule 228.01, and objections to

discovery must be filed with the Commission Secretary and copies served on all parties according to Rules 61, 62, 63, and 64, ~~except that the Staff by letter to the parties may request that additional copies be filed.~~ (7-1-93)()

Rule 231: Staff is proposing two changes to this rule. First, in an effort to reduce the amount of paper filed with the Commission, Staff proposes that prefile testimony be allowed to be printed on both the front and back of each page. Second, is clarifying the computer-searchable copies of testimonies in Subsection 05.

231. PREPARED TESTIMONY AND EXHIBITS (RULE 231).

01. Prepared Testimony May Be Required. Order, notice or rule may require a party or parties to submit prepared testimony and exhibits to be presented at hearing. (7-1-93)

02. Format for Prepared Testimony. (7-1-93)

a. Prepared testimony and exhibits must be accompanied by a cover sheet showing the case caption and case title, the person testifying, the party for whom the testimony is offered, and the nature of the testimony (direct, rebuttal, etc.). (7-1-93)

b. The first page of prepared testimony should contain testimony only (i.e., it should begin with the first question to the witness and not repeat the information on the cover page). (7-1-93)

c. Prepared testimony must be submitted on white eight and one-half by eleven inch (8-1/2" x 11") paper, be double-spaced (except for quoted material and tables or other collections of numerical data), and contain no more than ten (10) characters per inch and no more than twenty-five (25) lines of double-spaced testimony per page. Each page may be printed on the front and back (duplexed). (7-1-93)()

d. Each line of prepared testimony must be numbered at the left margin (except single spaced quotations or tables of numerical data, which may be numbered at the left margin as though they were double spaced). Each page of testimony must have a one and one-half (1-1/2) inch left margin that will allow the page to be bound on its left side without obscuring the printed material. Indentations for paragraphing and for "Q" and "A" must be seven (7) spaces. (7-1-93)

e. Each page of prepared testimony must be numbered at the lower right corner and must be blank in the center of the bottom margin to allow the reporter to insert transcript page numbers there. Each page of prepared testimony must have at least a one-inch (1") top and bottom margin. (7-1-93)

f. Each page of prepared testimony must contain the witness's surname followed by the designation "Di" (signifying direct testimony) or "Di-Reb" (signifying direct testimony on rebuttal) and the name of the party sponsoring the testimony printed in the lower right margin. For example, the marginal notation on page 5 of the testimony of the witness Lynn Accountant of ABC Company would be:

5	or	Accountant, Di 5
ACCOUNTANT, DI		ABC Company
ABC COMPANY		(7-1-93)

03. References to Exhibits. All references to exhibits in prepared testimony must refer to the exhibits by their number as assigned by the Commission Secretary. Exhibits accompanying prepared testimony must be consecutively numbered from the first exhibit number assigned to the party by the Commission Secretary if the party has not previously identified exhibits, or from the highest exhibit number previously identified by that party. Exhibits must be filed on eight and one-half by eleven inch (8-1/2" x 11") paper unless it is impractical to make them that size. Exhibits accompanying prepared testimony must comply with Rule 267. (7-1-93)

04. Number of Copies -- Filing and Service. Unless otherwise provided by order, notice or agreement of the parties, nine (9) legible copies of prepared testimony and exhibits must be filed with the Commission Secretary and copies filed on all parties pursuant to Rules 61, 62, 63 and 64 at least fourteen (14) days before the hearing at which they will be presented. The original, if there is an original, or one (1) of the copies, if there is not, must be specifically designated as the reporter's copy by cover sheet, attached note or otherwise, and be included with the copies filed with the Commission Secretary. In special circumstances, notice or order may provide that the reporter's copy of prepared testimony and exhibits be served directly on the reporter rather than the Commission Secretary. (7-1-93)

05. Computer-Readable Searchable Copies of Testimony. In addition to the paper copies of prepared testimony, the Commission Secretary may also require or the parties may

agree that some or all of the prepared testimony to be submitted to the secretary, parties or and the reporter in computer searchable disks CD-ROM. The CD-ROM shall be in standard ASCII format, Adobe Acrobat (PDF), or other searchable format agreed upon by the reporter and the parties. Each CD-ROM shall be labeled with the Commission's case number, case name, the name of each witness and the sponsoring party. (4-5-00)()

Rule 233: To be consistent with the Staff's recommendation regarding the use of yellow paper for confidential information in Rule 67, Staff is recommending that Subsection 02 be updated to reflect the use of yellow paper as well.

233. ASSERTIONS THAT DISCOVERED MATERIAL IS PROTECTED FROM PUBLIC INSPECTIONS -- PROCEDURES (RULE 233).

01. Assertion of Protection. Whenever any party to a request for discovery believes that material otherwise discoverable is protected by statute or rule of law from inspection, examination or copying by the general public, the attorney for the party asserting the material is protected by law from inspection, examination or copying must state that the answer or some portion of it is protected, citing the specific statute or other legal authority for that position. The attorney's assertion constitutes a representation that the attorney is familiar with the material claimed not to be available for public inspection, examination and copying and in good faith believes there is a basis in law for that claim. (4-5-00)

02. Procedures. When an answer contains material, some of which is protected by law from public inspection, examination, and copying and some of which is not, the protected material must be reproduced on ~~any colored~~ yellow paper ~~other than white~~ and separated from material available for public review. Each page of the material exempt from public review must be marked "Trade Secrets" or "Confidential." All material exempt from public review shall be filed with the Commission Secretary and served on all parties under seal pursuant to Rule 229. Material exempt from public review shall be separately stored in a secure location with limited access and safeguarded from unauthorized disclosure. All material for which no assertion of protection against public inspection, examination and copying is made will be placed in files available for public inspection. (4-5-00)()

Rule 241: The Staff is recommending a new Subsection 04 that delineates the two types of formal hearings that the Commission generally conducts: technical hearings and customer hearings. Subsection 04.b. provides that unless otherwise ordered by the presiding officer at a hearing, parties are prohibited from presenting evidence at a customer hearing. This rule comports with the Commission's practice of having parties present their technical evidence at a technical hearing.

241. NOTICE OF HEARING (RULE 241).

01. Timing of Notice. Notice of the place, date and hour of hearing will be served at least fourteen (14) days, or in the case of formal complaints, twenty-one (21) days, before the time set for hearing, unless the Commission finds by order that the public necessity requires the hearing to be held earlier. (7-1-93)

02. Contents of Notice. Notices must comply with Rule 242's requirements. Notices must list the names of the parties (or the lead parties if the parties are too numerous to name), the case number, and the name of the hearing officer who will conduct the hearing if the case will not be heard by one (1) or more Commissioners. If no document previously issued by the Commission has listed the legal authority of the Commission to conduct the hearing, the notice of hearing must do so. The notice of hearing shall state that the hearing will be conducted under these rules of procedure and inform the parties where they may read or obtain a copy. (7-1-93)

03. Locations of Hearing. Hearings may be held in Boise, Idaho, or at other places designated by notice or order. (7-1-93)

04. Types of Formal Hearings. The Commission generally conducts two (2) types of formal public hearings. ()

a. A technical hearing is a public hearing where parties present witnesses and their prepared testimony and exhibits. ()

b. A customer hearing is a public hearing for customers, public officials, and other persons not related to parties in the case to provide testimony. Unless otherwise ordered by the presiding officer, parties are prohibited from presenting evidence at the customer hearing. ()

Rule 244: Staff recommends that this rule cross-reference Rule 47 (Conduct Required) and *Idaho Code* § 18-6409(1) (Disturbing the Peace).

244. CONDUCT AT HEARINGS (RULE 244).

All persons attending a hearing must conduct themselves in a respectful and courteous manner. Persons disrupting the hearing shall be asked to leave by the presiding officer. See Rule 47; Section 18-6409(1), Idaho Code. Smoking is not permitted at hearings. (7-1-93)()

Rule 260: The Staff recommends moving Rule 105 from the Commission's Utility Customer Information Rules to this location. As indicated below, this rule requires parties at Commission hearings to make summaries of their position and testimony available to members of the public. By moving Rules 102 and 105 from the Utility Customer Information Rules (IDAPA 31.21.02), the Staff eventually believes that the Commission may be able to eliminate the latter rule set.

260. ~~(RESERVED).~~ SUMMARY OF POSITION(S) AND TESTIMONY (RULE 260).

Each utility shall make available to the public at all Commission hearings a brief written summary of the utility's position(s) and testimony filed in the case under consideration except when the Commission has determined that a summary is not necessary. If the utility is requesting a rate increase, its summary shall address the utility's need for additional revenue, the total dollar amount requested, and the proposed percentage increase or decrease in rates for each major customer class. The Commission Staff and intervenors shall also provide a brief summary of their recommendations and the testimony filed in the case under consideration. These summaries and presentations are provided solely for the convenience of the public and will not be allowed as evidence or form the basis for cross-examination of any witness. ()

Rule 267: Replaces "colored paper" with yellow paper.

267. EXHIBITS (RULE 267).

01. Exhibit Numbers. Exhibit numbers are assigned to the parties before hearing according to Rule 230. (7-1-93)

02. Form of Exhibits. Public exhibits offered at hearing must ordinarily be typed or printed on eight and one-half by eleven inch (8 1/2" x 11") white paper, except maps, charts, photographs and non-documentary exhibits may be introduced on the size or kind of paper

customarily used for them. Exhibits that are trade secrets, confidential information or otherwise exempt from public review shall be printed on ~~any-colored~~ yellow paper ~~other than white~~. A copy of each documentary exhibit must be furnished to each party present, to the reporter, and to each Commissioner or hearing examiner, except for unusually bulky or voluminous exhibits that have previously been made available for the parties' inspection. Copies must be of good quality.

(4-5-00)()

03. Timely Filing of Exhibits. Exhibits offered as part of a party's direct case (except exhibits offered on redirect examination) must be timely filed. Exhibits filed pursuant to any order, notice or rule requiring their filing before hearing are timely filed. Otherwise, exhibits must be distributed or made available to all parties long enough before their introduction into evidence to allow the parties a reasonable opportunity to review them and to prepare to examine their substance, except those exhibits that update exhibits previously timely filed may be filed so long as fair opportunity is afforded other parties to examine the sponsoring witnesses about the updated material.

(7-1-93)

04. Objection – Admission. Exhibits identified at hearing are subject to appropriate and timely objection before the close of proceedings. Exhibits to which no objection is made are automatically admitted into evidence without motion of the sponsoring party.

(7-1-93)

05. Labeling of Exhibits. All exhibits accompanying prepared testimony, exhibits introduced during direct examination of a party's witnesses, and, to the extent practicable, all other exhibits introduced at hearing must label the exhibit number, case number, party and witness sponsoring the exhibit, and any subdivisions within the exhibit, such as separate schedules or charts. Examples of labeling required by this rule are:

Exhibit No. 101	Exhibit No. 507
Case No. XXX-X-XX-XX	Case No. XXX-X-XX-XX
P. Engineer, Staff L. Accountant, ABC Company	
Schedule 1, p. 1 of 3	

Exhibits prepared for the proceeding must contain this labelling on each page of the exhibit. Exhibits reproducing previously existing documents may contain a cover page with this labelling, but need not be labelled on each page.

(7-1-93)

06. Sources for Exhibits. Exhibits prepared from data in workpapers, answers to discovery, periodicals, reports or other documentable sources of information must contain a statement of sources. Examples of the statements of sources required by this rule are:

(7-1-93)

P. Engineer, Workpapers -- Answer of XYZ Utility
to First Tab A, pages 1 - 47 Production Request of ABC
Company, Question 13

Moody's Public Utility -- XYZ Utility,
FERC Form 1 (1993)
Manual p. 402a 1993 Vol. 1, p. 606

Exhibits especially prepared for introduction into evidence in a proceeding (i.e., exhibits not otherwise prepared or in existence) should be descriptively titled to show their contents and purpose. (7-1-93)

07. Certain Exhibits Require Presiding Officer's Approval. Neither motion pictures, slides, opaque projections, video tapes, audio tapes nor other materials not capable of duplication by still photograph or reproduction on paper shall be presented as exhibits without prior approval of the presiding officer. Writing, sketching and drawing on blackboards or other similar surfaces by witnesses presenting testimony do not constitute an exhibit or evidence in the proceeding unless the writing, sketching or drawing is reproduced, photographed, or otherwise preserved for the record. (7-1-93)

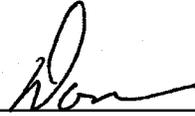
Rule 272: Staff recommends that when it engages in "active" settlement that it be required to notify the Commission as well as the other parties.

272. PROCEDURES FOR ACTIVE SETTLEMENTS (RULE 272).

Settlements in formal proceedings in which one (1) or more parties negotiate an agreement differing from positions of one (1) or more of the parties previously on record with the Commission are called active settlements. Any party other than the Commission Staff may enter into an active settlement with any party other than the Commission Staff without prior notification to the Commission or other parties. The Commission Staff, however, is precluded from entering into an active settlement without first notifying all other parties and the Commission that it intends to begin or has begun settlement negotiations. The Commission Staff must give all other parties an opportunity to participate in or be apprised of the course of the settlement negotiations before a final settlement agreement is reached. Settlement negotiations are confidential, unless all participants to the negotiation agree to the contrary. (7-1-93)()

COMMISSION DECISION

Does the Commission wish to make any changes to the proposed changes? Does the Commission wish to issue a Notice of Proposed Rulemaking? Does the Commission wish to have its Notice of Proposed Rulemaking in the October 1, 2008 APA Bulletin?



Don Howell
Deputy Attorney General

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