(text box: 1)BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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| IN THE MATTER OF PROCEDURAL REQUIREMENTS FOR APPROVAL OF CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY FOR TELECOMMUNICA­TIONS PROVIDERS DESIRING TO PROVIDE LOCAL SERVICE IN IDAHO. | )  )  )  )  )  )  ) | CASE NO. GNR-T-96-4  ORDER NO.   26738 |

On November 7, 1996, the Commission issued Procedural Order No. 26665 which clarified the requirements for Rule 111 and Rule 112 for local telecommunications providers. In that Order  the Commission set out the necessary information to be included with an application by a new local telecommunications provider for a Certificate of Public Convenience or Necessity (Certificate) and to be included with an application to amend a Certificate.  On November 27, 1996, the Idaho Telephone Association (ITA) filed a Petition for Clarification or Reconsideration of particular language in Procedural Order No. 26665. This Order clarifies the language at issue in ITA’s Petition.

DISCUSSION

On November 27, 1996, ITA filed a Petition for Clarification or Reconsideration of Procedural Order No. 26665 pursuant to Rule 331 and Rule 325 of the Commission Rules of Procedure, IDAPA 31.01.01.000 et seq. Idaho Code § 61-626 and Commission Rules 331 through 340 describe the procedures for reconsideration of Commission Orders.  Petitions for reconsideration must set forth the grounds why the petitioners contend the Order is unreasonable, unlawful, erroneous, or not in conformity with the law.   Rule 325 provides that a petition for clarification may be combined with a petition for reconsideration or be stated in the alternative as a petition for clarification and/or reconsideration. ITA’s Petition seeks clarification of Order No. 26665, or in the alternative, reconsideration of that Order.

ITA seeks clarification of  the Commission discussion of the tariff filing requirements to be applied to new entrants. Specifically it questions the wording which states that “. . . detailed cost of service studies are not necessary.”  In this portion of the Order the Commission states the following:

Tariff Filings

7.Proposed initial tariff and price sheets setting forth rates, rules, terms, and regulations applicable to the contemplated service. Initial tariff and price list filings must be in electronic form as well as paper.  The format for the electronic form will be submitted on a 3.5 inch computer diskette in WordPerfect readable format or other format as prescribed by the Commission Secretary.

ELI recommended that the Commission allow new entrants to file price lists containing the rates, terms, and conditions for basic local exchange service and the same price list, and under the same condition, as allowed for Title 62 services.  U S WEST, on the other hand, recommended that all providers be subject to the same requirements for cost support for tariff filings which pertain to Title 61 services.

We believe that in light of developing competition of local telecommunications service that detailed cost of service studies are not necessary. Idaho Code § 61-305 provides that public utilities shall file schedules showing rates and charges with the Commission.  Rule 133, IDAPA 31.01.01.133, also provides that the Commission may order public utilities to file tariffs showing rates and charges with the Commission. The requirement for filing anticipated rates and charges is also contained in Rule 111.06.  The electronic format is a further clarification for ease of administration. We find the above requirements to be fair, just and reasonable.

Order No. 26665 at 6 ( emphasis added).

ITA claims that the meaning of the decision when it states that “detailed cost of service studies are not necessary” for new entrants is unclear.  ITA asserts that one possible interpretation is that the Commission is holding that competitive entrants in the local exchange market do not have to meet the requirement of Title 61 with regard to the evidentiary showing that must be met to establish basic local exchange rates.  ITA believes that such a holding would be beyond the Commission authority.  ITA explains that although the Telecommunications Act of 1996 preempts the state from applying some aspects of traditional utility regulation to competitive local exchange providers, it does not preempt the states’ authority to set rates for such companies.  It further argues that the Commission is required by law to determine just and reasonable rates pursuant to Idaho Code §§ 61-301 and 61-502. Petition at 2.

Staff recommended to the Commission that the language at issue in the Petition could be rewritten to clarify possible ambiguity.  Staff offered the following suggestion to clarify the sentence in question.

Idaho Code § 61-302 provides that Title 61 services be offered at just and reasonable rates.  It is the Commission’s duty under Idaho Code § 61-502  to ensure that such rates are just and reasonable. All providers of Title 61 services, including new entrants, carry the burden of demonstrating that proposed rates are just, reasonable, and nondiscriminatory.  Typically, service providers have submitted cost data to support the proposed rates.  We believe that in light of developing competition of local telecommunications service that detailed cost of service studies may not be necessary in some instances.  For example, new local exchange providers that resell an incumbent’s services or sell unbundled service elements may not need to provide cost of service studies if end user rates bear a reasonable relationship to the cost of such services or unbundled elements. But, until Idaho law is changed, local service providers must comply with relevant substantive and procedural requirements when changing Title 61 rates. See Rules 121-130, IDAPA 31.01.01.121-130.

ITA  agrees with the suggested changes.

Commission Findings

We believe the language suggested by Staff and agreed to by ITA adequately  clarifies the language in Procedural Order No. 26665.  We therefore grant ITA’s Petition for Clarification/Reconsideration of Procedural Order No. 26665  and adopt the above recommended language for clarifying purposes of Procedural Order No. 26665.  All other aspects of Procedural Order No. 26665 shall remain in full force and effect.

O R D E R

IT IS HEREBY ORDERED that ITA’s Petition for Clarification/Reconsideration of Procedural Order No. 26665 is granted. Procedural Order No. 26665 is clarified as set out in the body of this Order. All other aspects of Procedural Order No. 26665 shall remain in full force and effect.

THIS IS A FINAL ORDER ON RECONSIDERATION.  Any party aggrieved by this Order or other final or interlocutory Orders previously issued in this Case No. GNR-T-96-4  may appeal to the Supreme Court of Idaho pursuant to the Public Utilities Law and the Idaho Appellate Rules.  See Idaho Code  § 61-627.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this                  day of December 1996.

                                                                                                                                      RALPH NELSON, PRESIDENT

                                                                                           MARSHA H. SMITH, COMMISSIONER

DENNIS S. HANSEN, COMMISSIONER

ATTEST:

Myrna J. Walters

Commission Secretary

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**COMMENTS AND ANNOTATIONS**

Text Box 1:

**TEXT BOXES**

Office of the Secretary

Service Date

December 30, 1996