DECISION MEMORANDUM

TO:COMMISSIONER NELSON

COMMISSIONER SMITH

COMMISSIONER HANSEN

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WORKING FILE

FROM:SUSAN HAMLIN

JOE CUSICK

DATE:DECEMBER 11, 1996

RE:CASE NO. GNR-T-96-4

PETITION FOR CLARIFICATION OR RECONSIDERATION OF PROCEDURAL ORDER NO. 26665

On November 7, 1996, the Commission issued Procedural Order No. 26665 which clarified the requirements of Rule 111 and Rule 112 for telecommunications providers.  The Commission set out the necessary information to be included with an application for a certificate submitted by a new provider of local exchange service in Idaho and the requirements to amend a certificate.

On November 27, 1996, the Idaho Telephone Association (ITA) filed a Petition for Clarification/Reconsideration of Procedural Order No. 26665 pursuant to Rule 331 of the Commission Rules of Procedure, IDAPA 31.01.01.331.  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 RECOMMENDATION

One of the purposes of Procedural Order No. 26665 is to help implement the Telecommunications Act of 1996, to foster competition in the local telecommunications market in Idaho. The limited purpose of this Order is to explain and clarify the application requirements for new local service providers to obtain a Certificate of Public Convenience and Necessity.  Staff does believe that the language questioned above could be rewritten to clarify possible ambiguity.   Staff offers the following suggestions to clarify the language:

 Idaho Code § 61-302 provides that Title 61 services be offered at just and reasonable rates.  It is the Commission’s dutyunder Idaho Code § 61-502  to ensure that such rates are just and reasonable.  New providers of Title 61 services carry the burden of demonstrating the reasonableness of those rates. 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 are not necessary. may not be necessary in some instances.  For example, new local exhange providers that resell an incumbent’s services or sell unbundled service elements may not need to provide cost of service studies because it is presumed that the incumbent’s rates for those services are reasonable.

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COMMISSION DECISION

Does the Commission wish to issue an Order clarifying the above quoted language in Procedural Order No. 26665?  Does the Commission have another suggestion?

Susan Hamlin

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