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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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| IN THE MATTER OF THE PETITIONS REQUESTING EXTENDED AREA SERVICE (EAS) BETWEEN ARBON AND AMERICAN FALLS, ARBON AND POCATELLO, AND BETWEEN ROCKLAND AND AMERICAN FALLS. | )))))) | CASE NO.  GNR-T-96-5 |
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| IN THE MATTER OF THE PETITIONS FROM RESIDENTS IN BEAR LAKE COUNTY REQUESTING INCLUSION IN THE SOUTHEASTERN IDAHO EXTENDED CALLING AREA OF U S WEST COMMUNICATIONS, INC.                                                                                            IN THE MATTER OF DIRECT COMMUNICA­TIONS ROCKLAND, INC.’S APPLICATION FOR AUTHORITY TO INCREASE RATES AND DISBURSEMENTS FROM THE IDAHO USF.    | ))))))))))) | CASE NO.  GNR-T-97-7CASE NO. ROK-T-97-1 |

STAFF’S RESPONSE TO U S WEST COMMUNICATIONS’ OPPOSITION TO PROPOSED ORDER AND MOTION FOR HEARING

COMES NOW the Staff of the Idaho Public Utilities Commission, by and through its attorney of record, Brad M. Purdy, Deputy Attorney General, and in response to U S WEST Communications’ Memorandum in Opposition to Proposed Order and Motion for Hearing in the above captioned cases, states as follows.

Based on the record before the Commission in these combined cases, Staff recommends that the extended area service (EAS) petitions be granted in accordance with the Proposed Order.  Staff further recommends granting U S WEST’s Motion for Hearing to consider what, if any, U S WEST’s costs are for implementing EAS in these cases and to establish a method for determining such costs in these and future EAS cases.  Staff recommends scheduling a prehearing conference within 10 days for the purpose of setting a schedule for hearing this specific issue.  At that prehearing conference, Staff will be prepared to support the Stipulation and Settlement, entered into by the Staff, Direct Communications Rockland (Rockland) and Direct Communications Lakeside (Lakeside), if the Commission believes it is necessary.

U S WEST’S OBJECTIONS

On March 3, 1998, the Commission issued a Proposed Order in these EAS cases granting the EAS Petitions, adopting a Stipulation and Settlement entered into between Staff and Rockland and Lakeside, and establishing local services rates.  See Order No. 27390 and the attached Proposed Order.  On March 24, 1998, U S WEST filed timely objections to the Proposed Order.  U S WEST made two general objections.  First, U S WEST objected to the Rockland and Lakeside rates because the record does not contain sufficient information “to assess” the reasonableness of the rates nor does it disclose the compensation methodology.  U S WEST Memorandum at 5.  U S WEST has agreed in a stipulation filed contemporaneously with this Response to withdraw its objection to the reasonableness of the rates and compensation methodology.  Second, U S WEST objected to that portion of the Proposed Order where the Commission denies EAS compensation to U S WEST based upon its lost toll revenues.  Id.citing Proposed Order at 8-9.

Recovery of U S WEST Lost Toll Revenue

U S WEST contends that its costs for implementing EAS in these calling areas are not addressed in the Proposed Order.  While both Staff and U S WEST contemplated a “later stage” proceeding to resolve these issues, U S WEST states that it is now time for such a hearing.  U S WEST Motion at 3.  Staff agrees a separate hearing is appropriate. However, there are a number of issues raised by U S WEST that must be addressed.

U S WEST primarily argues that the Proposed Order denies it compensation for the costs of implementing EAS in these cases and determines that “those costs are zero.”  U S WEST Memorandum at 14.  This is simply not true.  Neither the Proposed Order nor the Staff has ever suggested that U S WEST should not be compensated for its actual costs of implementing EAS. A brief history is helpful.

On August 12, 1997, the Commission approved a Stipulation entered into by Staff and U S WEST in the Company’s rate case, USW-S-96-5, that used available revenue sharing funds beyond the $1.5 million cap stipulated to in Case No. USW-S-96-4(footnote: 1) to offset the cost of new facilities related to implementing EAS—or up to $2.2 million from revenue sharing funds.  Order No. 27100 at 20.  That Second Stipulation (Exhibit 148 and subsequently adopted by the Commission) provided that new facilities installed with revenue sharing funds would be booked at their cost and offset with an adjustment to accumulated depreciation (resulting in no rate base addition).  Id.  That Stipulation also shifted costs associated with separations (shifting toll minutes to local minutes) and, thereby increased the Title 61 rate base by $7.451 million and operating expenses by $3.048 million.  Id.  Clearly, to the extent new facilities are now devoted to Title 61 service, there maybe corresponding costs.  IfU S WEST establishes with competent evidence that there are costs associated with the extension of Title 61 services by implementing these EASs,  U S WEST is entitled to have the opportunity to earn a reasonable rate of return for its Title 61 services.

1.  U S WEST has not been denied its costs of EAS.

Contrary to U S WEST’s assertions, the Proposed Order does not deny U S WEST compensation for the use of its facilities for Title 61 EAS service.  In the Proposed Order, the Commission denies U S WEST’s request for its lost toll revenue, i.e., Title 62 revenues.  The Proposed Order states:

We decline U S WEST’s request to compensate it for its lost toll revenue.  As we have previously stated,

we believe that the appropriate level of compensation . . . when converting a toll route to a local EAS route . . . is to allow the affected LEC to recover the reasonable and prudent cost of implementing EAS. . . . As we have stated in prior orders, we believe that it is not appropriate to allow U S WEST to recover its lost toll revenue because that is a competitive service.  Order Nos. 25826 at 8; 25923 at 5.

EAS Order No. 26311 at 11.

As indicated above and consistent with our revenue sharing Order No. 25826, we have permitted and will continue to permit U S WEST to use available revenue sharing monies to defray the cost of installing facilities to implement EAS.  However, we continue to adhere to our previous position that it is unreasonable to allow U S WEST to recover lost toll revenues.

Proposed Order at 8 (emphasis added).  Nothing in this Proposed Order should be reasonably read to deny U S WEST compensation for the use of its facilities or to find those costs to be “zero.”

2.  U S WEST only presented testimony concerning toll revenues and made no record of its capital costs, expenses associated with these EAS exchanges, or access charges.

 The Commission has long ruled that where the affected local exchange carrier’s toll and access are not part of its Title 61 price regulated services, the reduction in toll and access revenue caused by EAS is not a measure of the costs for implementing EAS.  See Order Nos. 25826, 25923, and 26311. As the Commission stated in the Proposed Order, “U S WEST’s toll services are subject to our Title 62 jurisdiction and are not rate regulated by this Commission.  We continue to believe that the appropriate measure of compensation should be to allow the LECs to recover the costs of implementing EAS.” Unlike Rockland and Lakeside, toll and access services are not price regulated by the Commission and, therefore, are not considered when determining U S WEST’s revenue requirements for its Title 61 services.

At the November 6, 1997 technical hearings in these cases, Company witness Ron Lightfoot only offered one proposal for the Commission’s consideration.  He suggested that U S WEST be compensated for the cost of implementing EAS by netting the difference between its lost toll revenue and the access charges it paid to other LECs.  GNR-T-96-5, Tr. at 75; GNR-T-97-7, Tr. at 139.  Although he provided testimony about the Company’s toll revenue losses, he did not offer any information or evidence quantifying the amount of offsetting access charges.  Consequently, even if lost toll was the appropriate measure of the cost of EAS, the Commission is unable to determine, based on the state of this record, the “costs” of implementing EAS under the Company’s lost toll methodology.  In other words, the Company did not offer all of the necessary evidence to calculate its EAS costs.

The Company argues that the Commission should allow cost recovery of all items which are proven with reasonable certainty to be justifiably used in providing service in rates.  U S WEST Memorandum at 13.  Although the Staff has no quarrel with this standard as applied to this particular case, U S WEST has not provided the Commission with the evidence needed to calculate the Company’s EAS costs with reasonable certainty.  As the advocate of its EAS methodology, it has the burden to supply the necessary evidence.  The Company has failed to supply competent and substantial evidence in the record to calculate the Company’s EAS costs.  Hayden Pines Water Company v. Idaho PUC, 111 Idaho 331, 723 P.2d 875 (1986).  It is the responsibility of the Company to introduce substantial and competent evidence into the record so that the Commission may make the findings of fact based upon the record.

It is this lack of basic information which the Staff finds so puzzling.  U S WEST asserts that as “the record currently stands, . . . there is competent evidence in the record from which the cost of EAS conversion for U S WEST may be determined.”  U S WEST Memorandum at 14.  Yet as demonstrated above, the record does not contain evidence regarding the offsetting access charges and, therefore, the “EAS costs” cannot be determined.  It is the Company, not the Commission, which is in possession of this data.

3.  U S WESThas not been denied the opportunity to present evidence on the costs of implementing EAS.

Staff agrees that U S WEST should have the opportunity to earn a fair return on the facilities used to provide EAS.  However, contrary to its assertions at page 15 of its Memorandum, U S WEST has not been denied the opportunity to present this information in these cases.  Because only U S WEST knows the cost of any additions to its Title 61 plant and the expenses associated with the provision of these services, it is U S WEST’s responsibility to provide that information to the Commission.  The Commission cannot grant EAS compensation in the absence of information.

In February 1997, Staff requested U S WEST cost information in formal Requests for Production.  See Exhibits A and C. U S WEST responded in March 1997; however the Company’s response to questions requesting cost data were as follows:

The information requested will be compiled as part of a network analysis that is done for proposed EAS routes in Idaho.  Such an analysis takes approximately 8 to 10 weeks once U S WEST Communications, Inc.  Network receives all necessary traffic data to commence a study.  USWC is in the process of coordinating the necessary traffic data with the independent company.

Exhibits A and C.  In September 1997, Staff issued a Second Production request which asked again for the requested information.  U S WEST’s response in October was:

U S WEST Communications N&TS has not yet received the necessary independent company traffic data to complete this study.  U S WEST has recently contacted the independent company to exchange traffic data.

Exhibit B.   Moreover, U S WEST witness Lightfoot did not testify regarding any calculations of its capital expenditures, nor did U S WEST ever update  its responses to Staff’s production requests.  The Commission cannot make findings on the cost of EAS, if the company requesting the costs places no evidence in the record.

4.  U S WEST has been provided with an opportunity to present its claim for compensation.

The Company next claims that it has been denied a reasonable opportunity to present its EAS compensation evidence.  U S WEST Memorandum at 13-16.  A review of the proceedings in these combined cases clearly shows otherwise.  On September 24, 1997, the Commission issued a Notice of Hearings.  The amended Notice issued on October 15, 1997 further required that all parties (except the Staff) prefile their direct testimony on October 20, 1997 and that any rebuttal testimony be filed by October 31, 1997.

 With this factual background, it is all the more surprising that U S WEST asserts “there was no opportunity for discussion of EAS compensation for U S WEST (or for that matter for the other affected local exchange companies).”  U S WEST Memorandum at 13-14.  The Commission’s Notice and the Company’s own actions cannot support this argument.  Other than resting its entire cost request on lost toll, U S WEST failed to make any record of its costs.  Thus, it cannot now assert it had no opportunity to present that information.

5.  U S WEST agrees that its costs do not need to be established prior to granting EAS in these cases.

Obviously, U S WEST does not have a problem with establishing its EAS costs after  the requested EAS routes have been granted, because U S WEST states that it has always been its intention to present that information in a later proceeding.  U S WEST Motion at 3.  In fact, U S WEST witness Lightfoot testified that the Commission should adopt procedures to handle EAS petitions affecting all southern Idaho cases on an annual basis in order to avoid the effect of small rate changes hitting customer bills each time a new EAS route was granted.  GNR-T-96-5, Tr. at 75-76; GNR-T-97-7, Tr. at 140; U S WEST Memorandum at  2.  Therefore, there are no due process problems associated with issuing the final Order granting EAS and determining U S WEST’s costs and the appropriate methodology in a separate proceeding initiated now.

SUMMARY

Staff recommends that EAS be granted and that the Commission issue its Proposed Order.  Staff further recommends granting U S WEST’s Motion for Hearing to consider what, if any, U S WEST’s costs are for implementing EAS in these cases and to establish a method for determining such costs in future EAS cases.  Staff recommends scheduling a prehearing conference within 10 days for the purpose of setting a schedule for hearing this specific issue.  At that prehearing conference, Staff will be prepared to support the Stipulation and Settlement if that is necessary.

DATED  at Boise, Idaho, this   31st        day of March 1998.

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Brad M. Purdy

Deputy Attorney General

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**FOOTNOTES**

1:

In the regional EAS case No. USW-S-96-4 the Commission approved an “interim rate” of $3.62 per month “until permanent rates could be determined in the rate case No. USW-S-96-5.”  Order No. 27100 at 8 citing Order Nos. 26672 at 19 and 26880 at 1-2.