DECISION MEMORANDUM

TO:COMMISSIONER HANSEN

COMMISSIONER NELSON

COMMISSIONER SMITH

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TONYA CLARK

STEPHANIE MILLER

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DAVID SCOTT

WORKING FILE

FROM:DON HOWELL

DATE:FEBRUARY 18, 1998

RE:JOINT MOTION OF STAFF, SILVER STAR AND TETON TELECOM TO ADOPT STIPULATION AND SETTLEMENT AGREEMENT AND ISSUE A PRO­POSED ORDER IN THE EASTERN IDAHO EAS CASES, NOS. GNR-T-96-6/ 97-3/97-8

On February 12, 1997, the Staff, Silver Star and Teton Telecom filed a Joint Motion to adopt a Settlement and Stipulation Agreement and moved the Commission to issue a proposed order in the above referenced cases.  Attached to the Joint Motion was a Settlement Agreement entered into among the Staff, Silver Star and Teton.  The Motion noted that the signatory parties have resolved the disputed issues in concerning the EAS Petitions from customers in the Driggs, Irwin, and Wayan exchanges.  In those Petitions, customers generally requested that the Commission grant EAS from the three affected exchanges to the U S WEST Communications eastern Idaho regional calling area.  The Motion and Settlement Agreement are attached for your review.

THE SETTLEMENT AGREEMENT

The Stipulation and Settlement Agreement notes that the parties previously offered testimony and exhibits at the hearings held November 6 and 18-19, 1997.  At the hearing they testified that EAS was warranted from the affected exchanges to the U S WEST eastern Idaho calling region.  Settlement at 2.  Following the settlement conference held on February 4, 1998, the Staff and Silver Star/Teton entered into the attached Settlement resolving all of the issues between the signatory parties in the three pending cases.  The issues resolved in the Settlement Agreement include:

1.  Stimulation Factor.  The parties agreed that the appropriate stimulation factor to be used for calculating EAS traffic and the necessary facility improvements should be at a “three times” (3x) rate.  As the Commission remembers, the companies argued that the appropriate stimulation factor should be a “four times” (4x) rate while the Staff argued that the appropriate stimulation factor was a “two times” (2x) rate.

2.  Growth Potential.  At the hearing, Teton argued that it should be entitled to a revenue stream of approximately 7% representing the “loss of growth potential” for Teton’s purchase of the Driggs exchange from U S WEST in Case No. SIL-T-94-1.  The Staff maintained that it was inappropriate to include any revenue projection for the lost growth potential.  In the Settlement Agreement, Teton agreed to withdraw its request for the growth revenue.

3.  Idaho USF Reimbursements. Silver Star and Teton agreed that implementing the requested EAS configuration should not result in any increase in disbursements to the companies from the Idaho Universal Service Fund.(footnote: 1)

4.  Proposed Rates.  Under the terms of the Agreement, customers in the affected exchanges would receive toll-free calling into the entire U S WEST eastern Idaho calling region.  One-party residential monthly rates would be set at $24.10 with one-party monthly business rates set at $42.00.  Although these rates are higher than those originally proposed by the parties at the hearing, the parties to the Joint Motion asserted that these higher rates are justified by: (1) adoption of the 3x stimulation factors; (2) elimination of any additional Idaho USF disbursements; (3) recognition of the jurisdictional shift in allocated operational costs caused by the sale of Columbine’s Colorado property; and (4) the intrastate revenue shift resulting from the conversion of toll routes to local EAS routes.

5.  Measured Service.  Given the increase in the proposed rates from those offered by the parties at the hearing, the parties to the Stipulation agreed that residential customers in Teton’s Driggs exchange should be offered measured service.  In the Settlement, the parties proposed that residential customers be offered measured service at a rate of $16.00 per month including 90 minutes of use.  Measured service customers will be charged a flat per minute rate of $.03 for all usage in excess of the 90 minutes.

6.  Future Rate Relief.  In the event that the Commission accepts the Stipulation and Settlement Agreement, then Silver Star and Teton agreed not to seek further rate relief until 1999 at the earliest.  As previously mentioned, the parties reserve the right to seek further rate relief for unforeseen legislative or regulatory actions.

The parties urged the Commission to adopt the Stipulation and Settlement.  They asserted that the Settlement represents a reasonable resolution of the disputed issues between the signatory parties in these cases.  In addition, they maintain that additional hearings are not warranted but they stand ready to provide additional evidentiary support if necessary.

In the Joint Motion, the parties requested that the Commission issue a proposed order adopting the Stipulation and Settlement Agreement in its entirety.  The parties observed that issuing a proposed order would allow the Commission to tentatively decide all of the remaining issues and allow other parties and interested persons to comment upon the proposed order.  U S WEST was not a party to the Settlement Agreement.

THE STANDARDS OF REVIEW

Procedural Rule 276 provides that the Commission is not bound by any settlement submitted by the parties.  The Commission “will independently review any settlement proposed to it to determine whether the settlement is just, fair and reasonable, in the public interest, or otherwise in accordance with law or regulatory policy.”  IDAPA 31.01.01.276.

In this proceeding, the Staff, Silver Star and Teton have requested that the Commission issue a proposed order adopting the settlement.  If the Commission is inclined to issue a proposed order in this matter, any party may file exceptions and briefs to a proposed order within 21 days of its service date, unless a different time is designated by the Commission.  IDAPA 31.01.01.312.  Any party may subsequently file and serve answers and accompanying briefs to the exceptions within seven days after service of the exceptions.  Id.  Consequently, the parties asserted that utilizing “a proposed order would allow the public and other parties to comment upon the Settlement Agreement and other issues decided in the proposed order.”  Joint Motion at 2.

Commission Decision

1.  Does the Commission wish to grant the parties’ Motion to utilize the proposed order as the vehicle for soliciting comments on the Stipulation and Settlement?

2.  Does the Commission desire to use another process for examining the Stipulation and Settlement Agreement?

Donald L. Howell

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**FOOTNOTES**

1:

Silver Star is a current USF recipient but Teton is not.  Barring unforeseen regulatory or legislative actions, the companies agreed that they would not seek any disbursements from the Idaho USF as a result of implementing EAS.