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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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| IN THE MATTER OF THE PETITION FROM RESIDENTS OF SWAN VALLEY, IRWIN AND PALISADES REQUEST­ING EXTENDED AREA SERVICE (EAS) TO ALL OF BONNEVILLE COUNTY, AND THE TOWNS OF RIRIE, VICTOR AND DRIGGS. | )  )  )  )  )  ) | CASE NOS.  GNR-T-96-6                       GNR-T-97-3                       GNR-T-97-8 |
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| IN THE MATTER OF THE PETITION FROM RESIDENTS OF GRAY’S LAKE, WAYAN AND FREEDOM REQUESTING INCLUSION IN THE U S WEST COMMUNICATIONS EASTERN IDAHO CALLING REGION.    IN THE MATTER OF THE PETITION FROM RESIDENTS OF TETON COUNTY REQUEST­ING EXTENDED AREA SERVICE (EAS) TO THE GREATER IDAHO FALLS AREA | )  )  )  )  )  )  )  )  )  )  ) |  |

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, Donald L. Howell, II, Deputy Attorney General, and responses to U S WEST Communications’ Memorandum in Opposition to Proposed Order and Motion for Hearing in the above captioned cases.  IDAPA 31.01.01.312.

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, Silver Star Telephone Company and Teton Telecom Company, if the Commission believes it is necessary.

U S WEST’S OBJECTIONS

On February 27, 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 Silver Star/Teton, and establishing local services rates.  Order No. 27379 and the attached Proposed Order.  On March 20, 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 Silver Star and Teton 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.  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.  These issues will be examined in greater detail below.

A. Objection to the Rates

1.  Information in the Record.  U S WEST objects to the issuance of a final Order approving the EAS requests because the record “does not contain information to assess the reasonableness of the rates.”  Id. at 5.  Staff finds this statement puzzling.  First and foremost, Silver Star and Teton are not claiming that their proposed rates are unreasonable.  Indeed, the Stipulation and Settlement states that the rates “are just and reasonable and produce revenues that are not more than Silver Star and Teton’s full revenue requirement on a combined company basis.”  Stipulation and Settlement at 3, ¶ 7.  Both the Companies and the Staff have stipulated that the rates are reasonable.  Joint Motion to Adopt Stipulation and Settlement at 2.

In addition, the Proposed Order discloses why the proposed rates are higher than initially recommended by either the Staff or the Companies at the technical hearing.  The rates were increased to recover the necessary revenue caused by adoption of the 3x stimulation factor, elimination of USF distribution (ranging up to $379,000 annually), and elimination of rural zone charges for hundreds of customers.  Proposed Order at 5-6, Stipulation and Settlement at 2-3.  The attached Affidavit of Staff witness Carolee Hall describes in greater detail Staff efforts to verify and conclude that the rates are reasonable.  Affidavit at 2-3.  U S WEST was provided with the Companies’ proprietary workpapers which support the reasonableness of the rates.  But, as U S WEST is well aware, proprietary data cannot be placed in the “public” record unless the supplier consents to such action.

A closer examination of U S WEST’s “objection” to the rates is also helpful.  The Company does not contest the Commission’s finding that, with the exception of the Freedom exchange, there is a sufficient community of interest to support granting the EAS Petitions for each of these exchanges.  The Company does not contest that these Petitions meet the criteria for EAS.  Likewise, U S WEST does not contend that the rates and charges agreed to in the Stipulation and Settlement are unfair, unjust or unreasonable.  U S WEST Memorandum at 23.  U S WEST states:

Although U S WEST is confident that these rates are very likely called for, given the great expense of providing local exchange service to customers in rural Idaho and the inability of LECs to spread costs to other services in the EAS context, the record simply does not explain the methodology used, the raw data relied upon or the assumptions include in the ultimate rate.

Id.  (emphasis added).

It does not contend that those rates and charges are unnecessary to recover the costs for implementing EAS by Silver Star and Teton or that those rates are not in the public interest.  Id.  Rather, U S WEST merely asserts that additional evidence is necessary because it is similarly situated and should be compensated for its costs of EAS using a comparable method.  Therefore, as U S WEST states, Staff asserts that there is not any reason to delay the proceedings or “thwart the efforts of those petitioners who have, in good faith, sought relief from the Commission for their local calling needs.”  U S WEST Motion for Hearing at 3.  However, as a practical matter, U S WEST’s objection to the recovery of Silver Star’s and Teton’s revenue requirements in the proposed rate design impedes and delays the implementation of these EAS requests.  U S WEST’s objection is a means to reach its primary goal:  recovery of its EAS costs — not the recovery of Teton’s or Silver Star’s EAS costs.

2.  The methodology.  The second reason given for its objections to the issuance of the Proposed Order is:

Given the fact that U S WEST is in a very similar position with regard to these companies, and the Proposed Order treats U S WEST in an entirely inconsistent fashion as to the outcome of the request for compensation, it is critically important that the record here be made very clear so that the distinctions, if any, between U S WEST and other LECs can be fully examined.

U S WEST Memorandum at 24.  Moreover, U S WEST is “confident that these rates are very likely called for . . .”  U S WEST Memorandum at 23.  It bears mentioning again, U S WEST does not contest their reasonableness.  Its sole reason for objecting and attempting to delay the issuance of the Commission’s final Order is to allow it to compare EAS cost methodology for these Title 61 regulated LECs to its own recovery methodology yet to be determined.  Id.  This is not a reason to withhold the Proposed Order and delay implementing EAS.

To the extent the methodology for the stipulated rates was not spelled out in the Stipulation and Settlement, the approach used to determine the costs of EAS for fully price regulated LECs remains as set forth in Ms. Hall’s testimony.  Tr. at 158-59.  Moreover, if U S WEST’s only concern is its ability to argue it is being treated inequitably, it can do that in the separate proceeding by presenting evidence and cross examining witnesses.

Staff, however, contends that the EAS methodology (or how EAS costs are determined and treated) for fully price regulated Title 61 LECs, such as Silver Star and Teton, is irrelevant to how U S WEST’s EAS costs should be treated.  A fully price regulated LEC’s toll rates, local rates, and access charges are set by the Commission and are part of the rate design used to meet the LEC’s revenue requirements.  If the Commission grants an EAS petition, it must ensure that the Title 61 LEC has the opportunity to continue to meet its revenue requirements.  If granting EAS changes the revenue that the LEC has the opportunity to generate through local or access services, the Commission must adjust the LEC’s rates to ensure that the LEC still has the opportunity to meet its revenue requirements.

However, U S WEST is not a fully regulated Title 61 company.  It is a hybrid Title 61 and Title 62 company because it elected to remove some of its telecommunications services from Title 61 regulation and place them under Title 62 regulation.  Order No. 22416.  In doing so, those services removed from price regulation no longer are considered by the Commission in determining U S WEST’s revenue requirement or in setting the rates for Title 61 services.  EAS routes and local exchange boundaries remain Title 61 services.  Id. at 5.  All any company is entitled to is the opportunity to meet its Title 61 revenue requirements from its entire array of Title 61 services.  That entails having rates set that allow it the opportunity to receive a fair rate of return (not confiscatory) on its capital investments and meet its costs associated with that capital investment.  Since U S WEST’s Title 62 toll and access services are not regulated by the Commission, that revenue is generally not considered as part of the revenue requirements for its Title 61 services.  This is totally different from fully price regulated Title 61 LECs.

U S WEST’s only reason for objecting to the proposed rates of Silver Star and Teton is for the purpose of arguing it is being treated inequitably.  Its objections should be rejected and the Commission should issue its final Order in these consolidated cases.

B.  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 Silver Star and Teton, 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 18, 1997 technical hearing, Company witness John Souba 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 its lost toll revenue and the access charges it paid to other LECs.  Tr. at 128.  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 to calculate the Company’s EAS costs with reasonable certainty.  As the advocate of its EAS methodology, it hs 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 September 1997, Staff requested U S WEST cost information in formal Requests for Production.  See Exhibits A and B.  No response was received until the end of October 1997.  In those initial responses, U S WEST responded to all questions regarding the reqeusted cost data 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 B at 1-2.  Moreover, U S WEST witness Souba testified that as of the date of the hearing, U S WEST had not calculated its capital expenditures.  Tr. at 138.  Finally, on January 6, 1998, U S WEST supplemented its discovery responses for the Teton exchanges and stated it had no capital expenditures or facility upgrades or additions in the Teton exchanges.  Id.  It never updated  its responses related to the Silver Star exchanges.  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 in Order No. 27150.  In that Notice of Hearings, the Commission noted that it was convening a technical hearing for the purpose of taking “the technical evidence of the Companies and the Staff concerning the [EAS] costs (including any projected rate increase to fund the request), the community-of-interest, and feasibility of the request.”  Order No. 27150 at 3.  This Notice further required that all parties (except the Staff) prefile their direct testimony on October 24, 1997(footnote: 2) and that any “rebuttal testimony will be presented at the technical hearing.”  Id.

The Commission’s Notice of Hearings clearly advised the companies (including U S WEST) that this was the opportunity to present evidence regarding the recovery of EAS costs.   In fact, U S WEST prefiled Mr. Souba’s testimony on the date that the other companies filed — October 31, 1997.  Indeed, as previously mentioned, U S WEST presented testimony regarding its proposed recovery methodology and some of the data necessary to calculate its proposed EAS costs.  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.

The Company maintains in its Memorandum that the Staff’s only comment on the subject of EAS compensation for U S WEST was that “the issue would be dealt with later.”  Id. at 14.   That statement was made in the context that U S WEST had failed to respond to discovery and provide its cost information.  Hall Affidvit at 2.  However, the Company’s assertion is not supported by the testimony or the record in this case.  In particular, U S WEST witness Souba acknowledged on cross-examination that he was aware of a reference in a prior Commission Order that it was not appropriate to allow the Company to recover its lost toll revenue.  Tr. at 141.  In that same exchange, Staff counsel requested the Commission to take official notice of its own Order No. 26311.  The Chairman of the hearing ruled that the Commission would take official notice of that Order.  Tr. at 141.  That Order, set out in pertinent part in the Proposed Order at page 8, provides that “it is not appropriate to allow U S WEST to recover its lost toll revenue. . . .”  Order No. 26311 at 11.   In addition, the Company did not offer any additional evidence in this matter on rebuttal or redirect.  Tr. at 146-47.(footnote: 3)  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 Souba 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.  Tr. at 130-34; 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    27th        day of March 1998.

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Donald L. Howell, II

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.

2:

In Order No. 27194 the Commission allowed the companies to prefile direct testimony on October 31, 1997.

3:

U S WEST also complains that the “use of the Proposed Order procedure foreclosed even the opportunity to file post-hearing briefs on the U S WEST compensation issue, at least prior to the filing of these objections.”  U S WEST Memorandum at 14.  However, as it acknowledged and the record clearly shows, U S WEST did not request an opportunity to file a post-hearing brief.  Id. n.5.  Commission Procedural Rule 255 provides that “any party may move to file briefs” in any proceeding.  IDAPA 31.01.01.255.  For reasons known only to U S WEST, it did not request or offer to file post-hearing briefs.