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

|  |  |
| --- | --- |
|  |  |
|  |  |

|  |  |  |
| --- | --- | --- |
| IN THE MATTER OF THE PETITION FROM RESIDENTS OF TETON COUNTY REQUEST­ING EXTENDED AREA SERVICE (EAS) TO THE GREATER IDAHO FALLS AREA   | )))))) | CASE NO. GNR-T-97-8ORDER NO. 27538 |

In this case customers of Teton Telecom Company have petitioned the Commission for toll-free, extended area service (EAS) from their three exchanges to the greater Idaho Falls area.  Teton provides local exchange service to about 2,800 customers in and near the communities of Victor, Driggs, Tetonia and Felt.  U S WEST Communications provides local exchange service to many exchanges in and around Idaho Falls in what is commonly referred to as the eastern Idaho calling region.  Following public hearings in November 1997, the Commission issued a “Proposed Order” conditionally granting the EAS request and approving a post-hearing Stipulation and Settlement entered into between Teton and the Commission Staff.  The Commission invited written comments on the Proposed Order be filed no later than March 20, 1998, and reply comments be filed no later than March 27, 1998.

In Order No. 27456 issued April 13, 1998, the Commission adopted the Stipulation and Settlement but determined an additional public hearing was necessary before deciding whether to grant or deny the EAS Petition.  On May 5, 1998, the Commission convened the subsequent public hearing to receive evidence regarding customers’ willingness to pay higher local service rates to defray the cost of EAS.  After reviewing the original Petition, the evidence from our November hearings, the comments to the Proposed Order, the May 5 public testimony and the letters following the hearing, we conclude that customers have reaffirmed their desire for EAS and expressed a willingness to pay increased local rates.  Consequently, we grant the Petition as discussed in further detail below.

BACKGROUND

A.  Procedural History

The procedural history of this case is generally set out in Order No. 27456.  Briefly, the Commission convened public hearings in this matter on November 6 and 18-19, 1997.  At the evidentiary hearings, all of the parties conceded that the “community-of-interest” standards established in Order No. 26311 supported EAS to U S WEST’s eastern Idaho calling region. Teton witness Ray Hendershot offered three rate proposals for the Commis­sion’s consideration.  He recommended that monthly residential rates for unlimited local calling be set at either $17.51 or $20.38, while his proposed monthly business rates ranged from $17.51 to $36.57 .  Exhibits 2A, B, C (revised).  Staff witness Carolee Hall proposed increasing monthly rates for Teton residential and business customers to $17.25 and $32.48, respectively.  Tr. at 75.

Company witness Hendershot calculated that the proposed rates would not recover the entire cost of implementing EAS.  He estimated that there would be a residual annual revenue requirement ranging from $61,000 to approximately $200,000.  Exhibits 2A, B, C (revised).  He suggested that this revenue shortfall be met by providing disbursements from the Idaho Universal Service Fund (USF).

On February 12, 1998, the Staff and Teton filed a Joint Motion requesting that the Commission adopt a Stipulation and Settlement agreement.  The agreement resolved the disputed issues between the Staff and Teton.  Among other issues, Teton and the Staff agreed that the Company would not seek any disbursements from the Idaho USF.  Given the agreement not to seek USF revenues, the parties proposed increasing local service rates.  In their agreement, they urged the Commission to set monthly residential and business rates for local calling to the eastern Idaho calling region at $24.10 and $42.00, respectively.

On February 27, 1998, the Commission issued a Proposed Order conditionally granting the EAS request and tentatively approving the Stipulation and Settlement agreement.  The Commission invited the parties and members of the  public to file comments regarding the Proposed Order.

On April 13, 1998, the Commission issued Order No. 27456 adopting the Stipulation and Settlement agreement.  The Commission also found that while the calling data generally supported granting EAS, the Commission was uncertain whether Teton customers were willing to pay the increased local rates to defray the cost of providing EAS.  Order No. 27456 at 9-10.  Willingness to pay increased rates is one of the community-of-interest standards used to evaluate EAS requests.  Order No. 26311 at 9.  The Commission noted that the written comments regarding the Proposed Order and its adoption of the monthly residential and business rates ($24.10 and $42.00, respectively) “were equally divided between supporters and opponents.” Order No. 27456 at 10.  Given this uncertainty, the Commission decided it was necessary to convene an additional public hearing on May 5, 1998, for the purpose of receiving testimony regarding the willingness of customers to pay the increased monthly rates for EAS.  Id. at 13.

B.  Subsequent Proceedings

1.  Intervention.  On April 29, 1998, the Coalition for Fair Utility Rates (COFFUR) filed a Petition to Intervene.  The Coalition stated that it represents “persons who are opposed to the proposed Extended Area Service for Teton County.”  Petition at 1.  Teton Telecom and the Commission Staff filed separate responses.  They did not object to the Coalition’s intervention but urged the Commission to condition the intervention “so as not to broaden the issues to be addressed at the May 5, 1998, hearing and [already] decided by the Commission . . . .” Teton Response at 3.  In Order No. 27502 issued May 1, 1998, the Commission conditionally granted the Coalition’s Petition to Intervene.  Pursuant to its Procedural Rule 73, the Commission noted that the Coalition would be “bound by orders and notices earlier entered as a condition of granting the untimely petition” to intervene.  Order No. 27502 at 2 citing IDAPA 31.01.01.073.  The Coalition’s intervention was limited to addressing “the issue of whether customers are willing to pay the proposed higher rates for obtaining EAS service.”  Id.

2.  Reconsideration.  On May 4, 1998, David McCoy filed a Petition for Reconsideration via facsimile.  The Petitioner sought reconsideration of the Commission’s Order No. 27456 which adopted the Stipulation and Settlement agreement entered into between Teton and the Staff.  The Petition stated that it was not clear whether the Commission’s acceptance of the Stipulation and Settlement agreement in its Order No. 27456 was an interlocutory decision or a final decision.  Petition at 1.  Consequently, the Petitioner desired “to preserve his rights” to seek reconsideration under Procedural Rule 331 with respect to the Stipulation and Settlement agreement.  Id. citing IDAPA 31.01.01.331.

On May 8, 1998, the Staff filed an Answer to the Petition for Reconsideration.  The Staff maintained the Petition for Reconsideration should be dismissed “because it seeks reconsideration of a non-final, interlocutory Order.”  Staff Answer at 1.  The Staff asserted that with the additional public hearing, the Commission had not completed its final review of the Driggs EAS Petition.  Id.  The Staff contended that Order No. 27456 was an interlocutory Order because the Commission had not yet issued a final Order regarding the Driggs EAS Petition.  Id.  On May 12, 1998, the Petitioner filed a Reply to Staff’s Answer .

ADDITIONAL PUBLIC HEARING

Order No. 27456 directed Teton and the Staff to file “a brief explanation of their reasons for supporting the Stipulation” no later than April 24, 1998.  Order No. 27456 at 13.  Both parties timely filed their statements.  At the beginning of the May 5 hearing, Teton, the Coalition, and the Staff briefly presented their positions regarding the reasonableness of the proposed increased local rates.  U S WEST did not offer any opening statement.

1.  Position of the Parties. Teton’s president, Allen Hoopes, testified that implementing EAS imposes costs upon the telephone company at the same time that it eliminates toll revenues.  He insisted that the proposed rates were reasonable because they allow the Company to recover its costs while providing customer EAS to a regional calling area with more than 100,000 customers.  Tr. at 6.  He cautioned that rural rates may increase even if EAS were not approved, and that Teton Valley would become isolated from other eastern Idaho communities.  Tr. at 6-7, 10.

In her prepared statement, Staff witness Hall insisted that EAS is still warranted for Teton customers.  She noted that medical personnel testified at the November hearing that EAS to Idaho Falls and Rexburg is crucial for enhancing the quality of medical service delivered to citizens of the Teton Valley.  Although Driggs has its own hospital and medical clinics, other specialized medical services are located in Rexburg and Idaho Falls.  In addition, she stated that students and school district patrons would also benefit by the expanded local calling area.  Many area students attend college in Pocatello and Rexburg, and Driggs has a distance learning lab connected with the Eastern Idaho Technological College in Idaho Falls.  Staff Statement at 1.

Although the proposed residential and business rates represent significant increases, Hall explained that the increases are necessary to cover the cost of EAS while providing Teton customers with local calling to more than 115,000 customers in the eastern Idaho.  Id.  At the hearing, she testified that the sale of Teton Telecom’s Colorado telephone property and the accompanying “shift” in overhead expenses to Idaho were also responsible for part of the rate increase.  Tr. at 13-14.  She also explained that the proposed rate increase for Teton customers “is larger than the recent U S WEST EAS residential increase ($5.50), because [Teton] has approximately 3,000 customers from which to recover the costs while U S WEST has more than 400,000 customers.”  Statement at 2.

Finally, both Ms. Hall and Mr. Hoopes testified that the increase in residential rates will be mitigated by offering customers measured local service at $16.00 per month and the implementation of the Idaho Telecommunications Assistance Program (ITAP) this summer.  Tr. at 7, 14-15.  Ms. Hall explained that residential customers subscribing to local measured service will also receive 90 minutes of free local calling.  “Every minute in excess of those 90 minutes will be billed at $.03 per minute.”  Tr. at 14.  She calculated that measured service customers could make six hours of local calling before they reached the $24.10 monthly flat rate for unlimited local calling.  Tr. at 15.  When implemented, ITAP will provide a credit of $10.50 per month to eligible low-income residential customers for either measured or unlimited local calling.  Id.

The Coalition’s Chairman, Patrick Gallagher, opposed EAS for three primary reasons.  First, he suggested that the Commission consider making EAS an optional service.  By making EAS optional, those persons desiring an expanded area could subscribe to the service and those customers who do not desire expanded calling would not have to pay for EAS service.  Tr. at 21-22.  He also expressed dissatisfaction with the proposed rate structure for measured service.  He calculated that 90 minutes of local measured calling averages three minutes a day per month.  “After three minutes you’re actually paying a toll for a toll-free call. . . .”  Tr. at 21.  He suggested that limiting the free calling usage to 90 minutes will force people to seek out pay telephones to avoid the 90 minute cap.  Id.  Finally, he suggested that the Commission allow customers to vote on the issue of EAS.  He asserted that distributing ballots would be a better way to gauge the will of the people in Teton Valley.  “If the will of the people of this valley are [sic] for it by a majority, I’ll back off, but I want it to be fair.”  Tr. at 23.

2.  Public Testimony.  Nearly 50 individuals testified at the hearing.  Twenty-six persons supported EAS while about 20 opposed EAS.  Some customers opposing EAS echoed the Coalition’s positions and suggested that EAS be provided as an optional service for those customers who desire access to the larger calling area.  Other customers were opposed to EAS because they did not make many calls to the other 28 exchanges in the eastern Idaho calling region.  Still others indicated that they did not desire EAS calling to the region because they associated more with Jackson, Wyoming than Teton Valley.

The majority of customers urged the Commission to grant EAS and expressed a willingness to pay the increased rates.  Many customers indicated that even with the proposed increases, they would save between $40-$50 per month on their residential phone bills.  Several business customers also testified that they would save hundreds of dollars per month in toll charges if EAS were granted.  Other customers testified that approval of the EAS Petition might expand their business opportunities.

Several customers indicated that EAS will generally benefit the Teton Valley communities as well as the patrons and students of the local school district.  One customer reminded the Commission that more than half of approximately 275 people in attendance in the November 1997 hearing stood up in favor of paying more than $15 to obtain EAS.  Tr. at 89-91.  She also reminded the Commission that more than 500 individuals had signed the initial petition requesting EAS.  The original Petitioner in this case, Roy Moulton, also urged the Commission to approve the EAS Petition.  He suggested that failure to be included in the eastern Idaho calling area would detrimentally isolate Teton Valley.  Tr. at 127-28.

At the hearing, the Commission noted that it would keep the record open in this matter so that those unable to attend the hearing could provide written comments to the Commission.  Since the hearing, the Commission has received more than 40 written comments.  The vast majority of the these written comments are in favor of EAS.

FINDINGS OF FACT

1.  Reconsideration.  We turn first to the Petition for Reconsideration of Order No. 27456.  We agree with the argument presented by the Staff that when the Petition was filed, the Commission had not yet issued a final Order relating to this EAS Petition.  Our Procedural Rule 331 provides that only final orders are subject to reconsideration.  See also Utah-Idaho Sugar Co. v. Intermountain Gas Co., 100 Idaho 368, 373, 597 P.2d 1058, 1063 (1979) (final orders of the Commission should be challenged by petitioning for rehearing).  That portion of Order No. 27456 relating to the Teton or Driggs EAS Petition was an interlocutory or non-final Order.  That Order specifically noted that “an additional public hearing [is] necessary before deciding whether to grant or deny EAS.”  Id. at 2.  Issuance of this Order represents the final Order regarding the Teton EAS Petition.  Consequently, we find that the case was not ripe for reconsideration.  Although the Petition is denied, the Petitioner is not prejudiced by the dismissal because reconsideration from this final Order can now be sought.  IDAPA 31.01.01.331.

2.  Willingness to Pay.  We now turn to the issue of whether customers are willing to pay the increased rates necessary to obtain EAS.  After carefully reviewing the public testimony and the letters we have received, we find that a clear majority of customers have expressed a desire for EAS and the willingness to pay the increased local rates.  As set out above, the majority of customers testifying at our subsequent hearing urged the Commission to approve the EAS requests.  Although written comments may be entitled to less weight than individuals testifying under oath at our public hearing, the vast majority of written comments we have received since our May 5 hearing are also in favor of EAS.

3.  Measured Service.  Many customers at our May 5 hearing expressed concern about the structure of the residential local measured service offering.  More specifically, customers indicated a dissatisfaction with limiting the amount of free local calling to 90 minutes.  Although we approved the parties’ Stipulation in Order No. 27456 (including adoption of the 90 minutes of free usage), we find based upon the facts presented here that it is reasonable to increase the usage period to 120 minutes.  Based upon the testimony we received, increasing the usage from 90 minutes to 120 minutes does not present an undue incentive for customers to move from flat rate service to measured service.  As previously stated, the purpose of measured service is to offer a less expensive option to flat rate service to those customers who are able to limit their local calling.

In establishing the rate structure for measured service, our concern is to ensure that measured service carries an equitable share of the costs incurred in providing this service and to maintain a fair and reasonable relationship between flat rate service and measured service charges.  In this particular case, the monthly measured service rate of $16.00 is approximately 66% of the monthly flat rate and reasonably recovers costs. We find that increasing the usage period will not result in an unreasonable financial burden for the Company.  In particular, increasing the usage period by 30 minutes would, in a worst-case scenario, require the Company to forego less than $1 per measured service customer exceeding their usage by 90 minutes.  As amended, we believe that local measured service offers a reasonable alternative  to the $24.10 flat rate monthly service.

4.  Other Issues.  Several witnesses suggested that the issue of whether to authorize EAS between Teton’s three exchanges and the eastern Idaho calling region should be put to a vote.  While there is some attractiveness to putting such matters to a vote, we have repeatedly declined to adopt such a practice for several reasons.  First, there are logistic difficulties with creating and distributing accurate ballot information concerning the EAS proposal, determining the community-of-interest standards without a public hearing, and collecting ballots.  Second, as was evident by the testimony we received at our public hearings, customers favoring EAS do so for a host of different reasons.  The taking of public testimony allows the parties, as well as the Commission, an opportunity to explore the various reasons why customers desire EAS.  Public and technical testimony also allow the Commission to evaluate the advantages and disadvantages of EAS measured against the 13 community-of-interest standards established in Order No. 26311.

Third, public hearings give customers the opportunity to voice their comments concerning the structural or implementation of EAS.  Occasionally, customers’ suggestions result in changes to the EAS proposal.  Such was the case in this proceeding where we changed the structure of residential local measured service.  Finally, the Public Utilities Law vests the Commission with the authority to act “in the public interest.”  Determining when a particular action is beneficial or detrimental to the public interest does not necessarily lend itself to a determination of a simple single issue but usually entails the balancing of several, and at times, complex and/or competing issues and interests.  For example, requiring telephone companies to up-grade their networks to provide one-party service resulted in rate increases but also benefitted the entire body of customers by lowering maintenance costs, standardizing network configurations, and providing customers with a wider array of services.  We continue to believe that conducting public hearings open to any individual desiring to give testimony is the better way to obtain public input.

We also take this opportunity to amend one portion of Order No. 27456.  In our discussion of the willingness of customers to pay for increased rates on page 10, we purportedly reviewed the actual petitions initiating this case.  More specifically, we noted that the “Driggs petitions” did not reveal the petitioners’ preferences concerning their willingness to pay various amounts to receive EAS ($0, $1, $1-3, $3-5, $5-10, >$10) .  This observation was in error.  A review of the Teton EAS petitions filed with the Commission reveals that more than 500 people signed the petitions.  Of that amount, 32% indicated a willingness to pay increased monthly rates of $5 - $10 and an additional 29% indicated a willingness to pay more than $10 per month to obtain the requested EAS.  This data further supports the granting of EAS.

O R D E R

IT IS HEREBY ORDERED that the Petition from Teton Telecom customers generally requesting EAS to Idaho Falls and the other exchanges included in the eastern Idaho calling region is granted.  The Commission also affirms its adoption of the Stipulation and Settlement agreement entered into between Teton and the Staff except as noted below.

IT IS FURTHER ORDERED that Teton and U S WEST take the necessary actions to implement EAS as authorized by this Order.  The parties are directed to advise the Commission within fourteen (14) days of the service date of this Order of the “cut-over” date for implementating EAS.

IT IS FURTHER ORDERED that the usage minutes included with local measured service be increased to 120 minutes.  Teton shall file local service tariffs in conformance with the design and rates approved in this Order and Order No. 27456.  Silver Star should also notify its customers of the impending changes in an appropriate manner.  The new local service rates shall not be effective until EAS is implemented.

IT IS FURTHER ORDERED that the calculation of U S WEST’s EAS costs in this case will be determined in Case No. USW-T-98-3.

THIS IS A FINAL ORDER.  Any person interested in this Order (or in issues finally decided by this Order) or in interlocutory Orders previously issued in this Case No. GNR-T-97-8 may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order or in interlocutory Orders previously issued in this Case No.  GNR-T-97-8.  Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration.  See Idaho Code § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this                  day of May 1998.

                                                                                                                                       DENNIS S. HANSEN, PRESIDENT

                                                                                            RALPH NELSON, COMMISSIONER

MARSHA H. SMITH, COMMISSIONER

ATTEST:

Myrna J. Walters

Commission Secretary

Vld/O:GNR-T-97-8.dh2

**COMMENTS AND ANNOTATIONS**

Text Box 1:

**TEXT BOXES**

Office of the Secretary

Service Date

May 29, 1998