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

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| IN THE MATTER OF THE IDAHO TELE­PHONE ASSOCIATION’S REQUEST FOR ELIGIBLE TELECOMMUNICATIONS CARRIER DESIGNATION ON BEHALF OF  ITS MEMBER LOCAL EXCHANGE  CARRIERS. | )  )  )  )  )  )  ) | CASE NO. GNR-T-97-17  ORDER NO.  27255 |

On September 11, 1997, Idaho Telephone Association (ITA) filed a Petition on behalf of its member local exchange carriers requesting the Commission initiate a proceeding to designate those carriers as “Eligible Telecommunications Carriers” pursuant to the federal Telecommunica­tions Act of 1996.  Those Petitioners are: Albion Telephone Company; Westel; Cambridge Telephone Company; Council Telephone Company; Custer Telephone Coop.; Farmers Mutual Telephone Cooperative; Filer Mutual Telephone Company;  Project Mutual Telephone Cooperative Association; Fremont Telcom Co.; Inland Telephone Company; Midvale Telephone Exchange; Sawtooth Telephone; Mud Lake Telephone Coop.; Oregon-Idaho Utilities; Direct Communications Lakeside; Direct Communications Rockland; Rural Telephone Company; Silver Star Telephone Company; and, Columbine Telephone Company. A company designated as an eligible telecommunications carrier (ETC), is then eligible to receive federal universal service support.

The Petitioners assert that each meets the requirements for designation as an ETC with one exception.  The Petitioners maintain that they cannot offer “toll control” service at this time and requested that they be granted waivers of toll control requirements.  They further requested they be designated as rural telephone companies for the purposes of receiving exemptions and other benefits in accordance with the federal Telecommunications Act.

In Order No. 27175 issued October 22, 1997, the Commission found that this matter could be processed under Modified Procedure.  The Commission requested that interested persons file written comments regarding this Petition no later than November 12, 1997.  Only the Commission Staff filed written comments.

Based upon a review of the joint Petition, federal requirements and the Staff’s comments, the Commission grants this Petition.

BACKGROUND

Before a telecommunications carrier may receive federal universal service support, it must be designated as an “eligible telecommunications carrier” by the appropriate state regulatory commission.  Federal universal service support includes high-cost support, reimbursement for discounts provided to low-income customers in the Lifeline and Link Up programs,(footnote: 1) and federal support for health care providers.  Designation as a rural telephone company exempts the rural telephone company from the Telecommunication Act’s interconnection and resale requirements until the company has received a bona fide request for interconnection, services, or network elements, and the state Public Utilities Commission determines that such request is technically feasible, consistent with Section 254 of the Telecommunications Act of 1996 and not unduly economically burdensome.  47 U.S.C. § 251(f)(1).

A “rural telephone company” is defined under state and federal law as:

. . .  a local exchange carrier operating entity to the extent that such entity

(a) provides common carrier service to any local exchange carrier study area that does not include either-

(i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or

(ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;

(b) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

(c) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

(d) has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996.

Idaho Code §62-603 (10); 47 U.S.C. § 153 (37).

To be designated as an ETC, each Petitioner must offer “services that are supported by federal universal service support mechanisms . . ., either using its own facilities or a combination of its own facilities and resale of another carrier’s services” and “advertise the availability of such services and the charges therefore using media of general distribution.”  47 U.S.C. § 214(e).  In its Universal Service Order released in May 1997, the FCC designated the following services as “core” universal services and must be provided by the carrier in order to qualify as an ETC:

single-party service

voice grade access to the public switched network

touch-tone service

access to emergency services, including 911 and E911

access to operator services

access to interexchange service

access to directory assistance

toll limitation services for qualifying low-income consumers

FCC’s Universal Service Order, CC Docket No. 96-45, FCC 97-157 at ¶¶ 61-82 (codified at 47 C.F.R. § 54.101). With the exception of one Idaho Telephone Association LEC member, Oregon-Idaho Utilities, each Petitioner certifies that it meets the requirements for designation as an eligible telecommunications carrier for its Idaho service area with the exception of toll control services discussed below.

The FCC requires that ETCs provide qualifying low-income consumers “toll limitation services” free of charge.  Toll limitation services includes both “toll blocking” and “toll control” services.  Universal Service Order at ¶ 383.  Toll blocking prohibits a customer from making long-distance telephone calls.  Toll control permits a customer to limit the toll charges he or she incurs during a billing period to a pre-set amount.  Id.  The FCC acknowledged that many utilities may not currently possess the technical ability to provide all toll limitation services and authorized State commissions to grant a limited waiver of this requirement upon a “finding that exceptional circumstances prevent an otherwise eligible telecommunications carrier from providing . . . toll limitation.”  Universal Service Order at ¶ 388; 47 C.F.R. 54.101(c).  Waivers should be limited to that time the “state commission deems necessary for that eligible telecommunications carrier to complete network upgrades.”  Id.

The Universal Service Order also requires that the Commission designate the ETC service area.  An ETC service area is defined as a “geographic area established by a State commission for the purpose of determining universal service obligations and support mechanisms.”  47 U.S.C. § 214(e)(5).

The Telecommunications Act of 1996 defines the ETC “service area” as the “geographic area established by a State commission for the purpose of determining universal service obligations and support mechanisms.”  47 U.S.C. § 214 (e)(5).  In the case of an area served by a rural telephone company, “‘service area’ means such company’s ‘study area’ unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.”  Id.

IDAHO TELEPHONE ASSOCIATION’S PETITION

On September 11, 1997, Idaho Telephone Association filed a Petition on behalf of its member local exchange carriers, identified above, requesting the Commission initiate a proceeding to designate those carriers as “Eligible Telecommunications Carriers” and as rural telephone companies pursuant to the federal Telecommunications Act of 1996 in their respective study areas as identified in each member RLEC’s respective Certificate of Public Convenience and Necessity.  Idaho Telephone also asked the Commission to grant waivers to each member LEC of the toll control portion of the toll limitation requirements of the 1996 Act and to suspend the application of 47 U.S.C. § 251(c) to each of its member LECs for three years.

In its Petition, Idaho Telephone asserted that, except for Oregon-Idaho Utilities, each member LEC offers all of the designated core services outlined above using its own facilities and generally advertises the availability of those services.  Oregon-Idaho Utilities offers all the core services except it still uses one two-party line that has not been upgraded to single party service and requested the Commission find exceptional circumstances justifying a waiver of this requirement.  Idaho Telephone requested that its members Idaho study areas (i.e., certificated service area) be designated as each members’ ETC service area.  Finally, Idaho Telephone requested that the Commission waive the FCC requirement that its members provide toll-control service as part of the toll limitation services required to be offered by ETCs.

Idaho Telephone’s members, like all other carriers requesting ETC status in Idaho, requested that the Commission grant each a waiver of the requirement to offer toll control as part of the toll limitation services.  The FCC requires that ETCs provide qualifying low-income consumers “toll limitation services” free of charge.  Toll limitation services includes both “toll blocking” and “toll control” services.  Toll blocking prohibits a customer from making long-distance telephone calls.  Toll control permits a customer to limit the toll charges he or she incurs during a billing period to a pre-set amount.

Idaho Telephone stated that its members currently provide toll blocking services, but does not presently have the technical ability to provide ‘toll control’ as described by the FCC.  Therefore, Idaho Telephone requested that the Commission designate each identified member as an ETC effective January 1, 1998 and waive the toll control requirement.

STAFF COMMENTS

Staff confirmed that, regardless of the criteria used, each Idaho Telephone member clearly qualified as a rural telephone company and recommended the Commission designate each as a rural telephone company.  Staff Comments at 3

Idaho Telephone also requested a suspension of the application of 47 U.S.C. §251(c) to each of its members for three years, beginning January 1, 1998.  Staff confirmed that each member has fewer than two percent of the nation’s subscriber lines installed in the aggregate nationwide and, thus, each qualifies to petition the Commission for the suspension provided by 47 U.S.C. § 251(f) and Idaho Code § 62-615(2).  Staff Comments at 9.  Staff confirmed that a suspension is necessaryto avoid a significant adverse economic impact on users of telecommunications services generally and is consistent with the public interest, convenience, and necessity. Id.  Pursuant to Idaho Code § 62-615(2), Idaho Telephone petitioned the Commission to suspend the application of the section 251(c) obligations under the federal Telecommunications Act for a period of three years.  Staff recommended the Commission grant Idaho Telephone’s request to suspend application of the section 251(c) obligations for three years.  Id.

Likewise, Staff confirmed that, except for Oregon-Idaho Utilities, each Idaho Telephone member offered the required core services using its own facilities and generally advertised the availability of those services with the exception of toll control.  Staff Comments at 6-7.

Oregon-Idaho Utilities has not upgraded one two-party line to single-party service.  On behalf of Oregon-Idaho Utilities, Idaho Telephone requested the Commission find that “exceptional circumstances and the public interest warrant granting USF support until such time as single-party service can be provided.”  Staff found that there were exceptional circumstances justifying waiving this requirement to upgrade the facilities in Silver City for one year and recommended a waiver for Oregon-Idaho Utilities of this requirement for one year.  Staff Comments at 7.

Idaho Telephone also requested that the Commission suspend or waive any requirement that its members provide “toll control” services.  The FCC authorized state commissions to grant a waiver of the requirement of providing toll control or other toll limitation services “upon a finding that exceptional circumstances prevent an otherwise eligible telecommunications carrier from providing . . . toll limitation.”  FCC’s Universal Service Order (FCC 97-157), ¶ 388; codified at 47 C.F.R. § 54.101(c).  The FCC also suggested that any waiver period be limited to the existence of those exceptional circumstances and not extend beyond the time necessary for that eligible telecommunications carrier to complete network upgrades.  Id.  Although the FCC’s Order speaks to requiring ETCs to install toll blocking in any switch upgrade, the Universal Service Order is silent as to requiring toll control on any switch upgrades.  Universal Service Order ¶ 388.

Given the complexity of toll control services and the time Idaho Telephone’s members need to evaluate the technical feasibility of such a program, the Staff recommended that the Commission grant Idaho Telephone’s waiver request on behalf of its members.  The Staff asserted that offering eligible customers toll blocking partially meets the requirement for the toll limitation services.

In designating a telephone carrier as an ETC, the Commission must also designate the appropriate service and support areas.  47 U.S.C. § 214 (e)(2) and 47 U.S.C. § 214 (e)(5).  Idaho Telephone requested ETC designation for the study areas identified in each member’s Certificate of Public Convenience and Necessity issued by the Commission.  Idaho Telephone requested the ETC designation apply throughout each member’s respective Idaho study areas.  The Telecommunications Act of 1996 defines the ETC “service area” as the “geographic area established by a State commission for the purpose of determining universal service obligations and support mechanisms.”  47 U.S.C. § 214 (e)(5).  In the case of an area served by a rural telephone company, “service area” means “such company’s ‘study area’ unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.”  Id.

Based on its recommendation that these Petitioners be designated as rural telephone companies, Staff concurred with the request for designation of each Petitioner’s entire Idaho study area, as identified in the Petitioner’s respective Certificate of Public Convenience and Necessity, as the service area for the ETC designation.  Staff noted that Fremont and Westel both recently applied for new Certificates of Public Convenience and Necessity reflecting newly acquired exchanges and unserved areas. Case Nos. USW-T-97-17/FRE-T-97-1 and USW-T-97-17/WTL-T-97-1.  The Commission granted those applications in Order Nos. 27252 and 27253.  Therefore, the Staff recommended that, any study area designated by the Commission for Fremont and Westel should include those newly certificated areas.

Therefore, Staff recommended the Commission grant Idaho Telephone’s Petition with those exceptions as outlined above.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Each of Idaho Telephone Association’s member LECs is a telephone company subject to the Commission’s regulatory jurisdiction pursuant to Idaho Code Title 61 and Title 62.  Having fully reviewed the record in this matter, the Commission finds that each of the member LECs meets both the federal and the state definition of a rural telephone company and, therefore, designates each Idaho Telephone Association member LEC listed in the Petition as a rural telephone company.

Pursuant to 47 U.S.C. § 251(f) and Idaho Code § 62-615(2), the Commission finds that a suspension of the application of 47 U.S.C. § 251(c) to each Idaho Telephone member LEC for three years, beginning January 1, 1998, is necessaryto avoid a significant adverse economic impact on users of telecommunications services generally and is consistent with the public interest, convenience, and necessity. Therefore, the Commission grants the suspension for three years.

Likewise, the Commission finds that, except for Oregon-Idaho Utilities, each Idaho Telephone member LEC offered the required core services using its own facilities and generally advertised the availability of those services with the exception of toll control.  The Commission finds that Oregon-Idaho Utilities has not upgraded one two-party line to single-party service and that to do so, Oregon-Idaho Utilities must obtain authorization from a federal agency.  Therefore, the  Commission finds that exceptional circumstances and the public interest warrant waiving the requirement to upgrade Oregon-Idaho Utilities’ facilities in Silver City for three years.

Given the FCC’s acknowledgment that many telecommunications carriers do not possess the technical ability to provide toll control services , the Commission further finds that exceptional circumstances prevent these otherwise eligible telecommunications carrier from providing toll control and that three years is a reasonable amount of time in which to accomplish the upgrades.  Accordingly, the Commission grants the waiver request from the toll control requirement for a period of three years or until January 1, 2001.

In designating a telephone carrier as an ETC, the Commission must also designate the appropriate service and support areas.  47 U.S.C. § 214 (e)(2) and 47 U.S.C. § 214 (e)(5). In the case of an area served by a rural telephone company, “service area” means “such company’s ‘study area’ unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.”  Id.

Given that these Petitioners are designated as rural telephone companies, the Commission finds each member LEC’s entire Idaho study area, as identified in the respective Certificate of Public Convenience and Necessity, as the service area for the ETC designation.  The Commission further finds that Fremont’s and Westel’s study areas as reflected in the Certificates of Public Convenience and Necessity reflecting newly acquired exchanges and unserved areas approved in Order Nos. 27252 and 27253 constitute Fremont’s and Westel’s ETC service areas.

The Commission finds that each of the member LECs listed in Idaho Telephone Association’s Petition meets the requirements to be designated as a rural telephone company and  an eligible telecommunications carrier pursuant to federal and state law.  The Commission further finds that each of the member LECs listed in Idaho Telephone Association’s Petition should be granted a waiver from the requirement of providing toll-control services until January 1, 2001.  47 C.F.R. § 54.101(c).

Having concluded that each of the member LECs listed in Idaho Telephone Association’s Petition meets the requirements for designation as an eligible telecommunications carrier, the Commission designates its service areas as its study areas.

O R D E R

IT IS HEREBY ORDERED that Idaho Telephone Association’s request on behalf of its member LECs, as listed in its Petition, for designation of those members as eligible telecommunications carriers is granted.  Albion Telephone Company; Westel, Inc.; Cambridge Telephone Company; Council Telephone Company; Custer Telephone Coop.; Farmers Mutual Telephone Cooperative; Filer Mutual Telephone Company;  Project Mutual Telephone Cooperative Association; Fremont Telcom Co.; Inland Telephone Company; Midvale Telephone Exchange; Sawtooth Telephone; Mud Lake Telephone Coop.; Oregon-Idaho Utilities; Direct Communications Lakeside; Direct Communications Rockland; Rural Telephone Company; Silver Star Telephone Company; and, Columbine Telephone Company are hereby designated as ETCs effective January 1, 1998.

IT IS FURTHER ORDERED that Idaho Telephone Association’s request on behalf of its member LECs, as listed in its Petition, for designation of those members as rural telephone companies is granted.  Albion Telephone Company; Westel, Inc.; Cambridge Telephone Company; Council Telephone Company; Custer Telephone Coop.; Farmers Mutual Telephone Cooperative; Filer Mutual Telephone Company;  Project Mutual Telephone Cooperative Association; Fremont Telcom Co.; Inland Telephone Company; Midvale Telephone Exchange; Sawtooth Telephone; Mud Lake Telephone Coop.; Oregon-Idaho Utilities; Direct Communications Lakeside; Direct Communications Rockland; Rural Telephone Company; Silver Star Telephone Company; and, Columbine Telephone Company are hereby designated as rural telephone companies.

IT IS FURTHER ORDERED that Albion Telephone Company; Westel, Inc.; Cambridge Telephone Company; Council Telephone Company; Custer Telephone Coop.; Farmers Mutual Telephone Cooperative; Filer Mutual Telephone Company;  Project Mutual Telephone Cooperative Association; Fremont Telcom Co.; Inland Telephone Company; Midvale Telephone Exchange; Sawtooth Telephone; Mud Lake Telephone Coop.; Oregon-Idaho Utilities; Direct Communications Lakeside; Direct Communications Rockland; Rural Telephone Company; Silver Star Telephone Company; and, Columbine Telephone Companyare granted waivers from the requirement that each offer toll control services as a component of toll limitation services is granted for a period of three years or until January 1, 2001.

IT IS FURTHER ORDERED that Idaho Telephone Association’s request on behalf of its member LECs, as listed in its Petition, for the Commission to suspend the requirements of section 251(c) of the Telecommunications Act of 1996 for three years or until January 1, 2001 is granted.

IT IS FURTHER ORDERED thatthe ETC service area for Albion Telephone Company; Westel, Inc.; Cambridge Telephone Company; Council Telephone Company; Custer Telephone Coop.; Farmers Mutual Telephone Cooperative; Filer Mutual Telephone Company;  Project Mutual Telephone Cooperative Association; Fremont Telcom Co.; Inland Telephone Company; Midvale Telephone Exchange; Sawtooth Telephone; Mud Lake Telephone Coop.; Oregon-Idaho Utilities; Direct Communications Lakeside; Direct Communications Rockland; Rural Telephone Company; Silver Star Telephone Company; and, Columbine Telephone Company be designated, at this time, as each company’s study area as shown in its Certificate of Public Convenience and Necessity.  The Commission specifically reserves the right to revisit the appropriate designation of service areas at such time as it takes up the designation of ETC support areas.

IT IS FURTHER ORDERED that Oregon-Idaho Utilities is granted a waiver of the requirement to provide single-party service in Silver City for a period of three (3) years or until January 1, 2001.

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 these Case No. GNR-T-97-1 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 these Case No. GNR-T-97-1.  Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration.  See Idaho Code §§ 61-626 and 62-619.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this                  day of December 1997.

                                                                                      DENNIS S. HANSEN, PRESIDENT

                                                                                       RALPH NELSON, COMMISSIONER

MARSHA H. SMITH, COMMISSIONER

ATTEST:

Myrna J. Walters

Commission Secretary

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**FOOTNOTES**

1:

The FCC Lifeline program currently reduces charges for low-income consumers in those states participating in the program.  Link Up assists low-income subscribers to acquire new telephone service by paying half of the first $60.00 charge for the installation of service.  Idaho participates in both programs.

**COMMENTS AND ANNOTATIONS**

Text Box 1:

**TEXT BOXES**

Office of the Secretary

Service Date

December 17, 1997