CHERI C. COPSEY

DEPUTY ATTORNEY GENERAL

IDAHO PUBLIC UTILITIES COMMISSION

PO BOX 83720

BOISE,  IDAHO  83720-0074

(208) 334-0314

Street Address for Express Mail:

472 W WASHINGTON

BOISE ID  83702-5983

Attorney for the Commission Staff

BEFORE  THE  IDAHO  PUBLIC  UTILITIES  COMMISSION

IN THE MATTER OF THE IDAHO)

TELEPHONE ASSOCIATION’S REQUEST)CASE  NO.  GNR-T-97-17

FOR ELIGIBLE TELECOMMUNICATIONS)

CARRIER DESIGNATION ON BEHALF)

OF ITS MEMBER LOCAL EXCHANGE)COMMENTS OF THE

CARRIERS.)COMMISSION STAFF

)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)

COMES  NOW  the Staff of the Idaho Public Utilities Commission, by and through its Attorney of record, Cheri C. Copsey, Deputy Attorney General, in response to Order No. 27175, the Notice of Petition and Notice of Modified Procedure in Case No. GNR-T-97-17 issued October 22, 1997, submits the following comments.

BACKGROUND

On September 11, 1997, the Commission received a petition filed by the Idaho Telephone Association (ITA) requesting the Commission to initiate a proceeding to designate the ITA member local exchange carriers (ITAC) as “Eligible Telecommunications Carriers” (ETC) pursuant to the federal Telecommunications Act of 1996.  Those member companies 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.

In the petition, the Commission was requested to:

1.Designate each Petitioner as an “Rural Telephone Company” pursuant to 47 U.S.C. § 153(37); and

2.Designate each Petitioner as an “Eligible Telecommunications Carrier” pursuant to Section 214(e)(2) of the 1996 Act for the purposes of receiving federal universal service support, exemptions and other benefits in accordance with the federal Telecommunications Act.

3.Apply the ETC designation throughout the Petitioner’s respective Idaho study areas which include the areas included in the Petitioner’s Certificate of Public Convenience and Necessity issued by the Commission.

4.Suspend the application of the requirements of 47 U.S.C. § 251(c) to each of the ITAC’s for a period of three years, beginning January 1, 1998.

5.Suspend or waive any requirement that the ITAC’s provide “toll control.”

6.Provide for a settlement conference at which the ITAC’s and the Commission Staff can verify the proper boundaries within which the ETC designations and suspensions can apply, and produce maps of the same.

7.Proceed under the Commission’s Rules for Modified Procedure.

The application included an exhibit identifying the legal boundaries of each of the ITAC’s service area as indicated in its Certificate of Public Convenience and Necessity and testimony of Raymond A. Hendershot supporting the Petition.

On October 22, 1997, the Commission issued Order No. 27175, providing notice of the Petition and notice that the proceeding would be conducted according to the Commission’s Rules for Modified Procedure.

STAFF ANALYSIS

1.“Rural Telephone Company” Designation:

The1996 Act included the following definition of a rural telephone company.  The FCC has included the same definition in its rules.

(37) Rural Telephone Company.-The term “rural telephone company” means 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.

The Idaho Legislature included this same definition in the amendments to Title 62 of the Idaho Code that were adopted in 1997.

As the table identified as Exhibit 1 of Mr. Hendershot’s testimony indicates, regardless of the criteria in the definition that is used, each of these utilities clearly qualifies as a “rural telephone company.”  Therefore, Staff recommends each Petitioner be designated as a rural telephone company.

2.Designation as “Eligible Telecommunications Carrier.”

Section 214(e) of the 1996 Act specifies:

(1) Eligible Telecommunications Carriers.-A common carrier designated as an eligible telecommunications carrier under paragraph (2) or (3) shall be eligible to receive universal service support in accordance with section 254 and shall, throughout the service area for which the designation is received-

(A) offer services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier’s services (including the services offered by another eligible telecommunications carrier); and

(B) advertise the availability of such services and the charges therefor using media of general distribution.

The FCC defined the services that are to be supported by the federal universal service support mechanisms in Order FCC 97-157 as follows:

(1)Voice grade access to the public switched network.  “Voice grade access” is defined as a functionality that enables a user of telecommunications services to transmit voice communications, including signaling the network that the caller wishes to place a call, and to receive voice communications, including receiving a signal indicating there is an incoming call.  For purposes of this Part, voice grade access shall occur within the frequency range of between approximately 500 Hertz and 4,000 Hertz, for a bandwidth of approximately 3,500 Hertz;

(2)Local usage.  “Local usage” means an amount of minutes of use of exchange service, prescribed by the Commission, provided free of charge to end users;

(3)Dual tone multi-frequency signaling or its functional equivalent.  “Dual tone multi-frequency” (DTMF) is a method of signaling that facilitates the transportation of signaling through the network, shortening call set-up time.

(4)Single-party service or its functional equivalent.  “Single-party service” is telecommunications service that permits users to have exclusive use of a wireline subscriber loop or access line for each call placed, or, in the case of wireless telecommunications carriers, which use spectrum shared among users to provide service, a dedicated message path for the length of a user’s particular transmission;

(5)Access to emergency services.  “Access to emergency services” includes access to services, such as 911 and enhanced 911, provided by local governments or other public safety organizations.  911 is defined as a service that permits a telecommunications user, by dialing the three digit code “911", to call emergency services through a Public Service Access Point (PSAP) operated by local government.  “Enhanced 911" is defined as 911 service that includes the ability to provide automatic numbering information (ANI) which enables the PSAP to call back if the call is disconnected, and automatic location information (ALI), which permits emergency service providers to identify the geographic location of the calling party.  “Access to emergency services” includes access to 911 and enhanced 911 services to the extent the local government in a eligible carrier’s service area has implemented 911 or enhanced 911 systems;

(6)  Access to operator services.  “Access to operator services” is defined as access to any automatic or live assistance to a consumer to arrange for billing or completion, or both, of a telephone call;

(7)  Access to interexchange service.  “Access to interexchange service” is defined as the use of the loop, as well as that portion of the switch that is paid for by the end user, or the functional equivalent of these network elements in the case of a wireless carrier, necessary to access an interexchange carrier’s network;

(8)  Access to directory assistance.  “Access to directory assistance” is defined as access to a service that includes, but is not limited to, making available to customers, upon request, information contained in directory listings; and

(9)  Toll limitation for qualifying low-income consumers.  Toll limitation for qualifying low-income consumers is described in sub-part E.

Subpart E defines toll limitation as follows:

(1) Qualifying low-income subscriber.  A “qualifying low income subscriber” is a subscriber who meets the low income eligibility criteria established by the state commission, or, in states that do not establish eligibility criteria, a subscriber who participates in a state administered, low-income welfare program.

(2) Toll Blocking.  “Toll Blocking” is a service provided by carriers that lets consumers elect not to allow the completion of outgoing toll calls from their telecommunications channel.

(3) Toll control.  “Toll control” is a service provided by carriers that allows consumers to specify a certain amount of toll usage that may be incurred on their telecommunications channel per month or billing cycle.

(4) Toll limitation.  “Toll limitation” denotes both toll blocking and toll control.

In anticipation of petitions for ETC designation, Staff contacted each of the telephone utilities operating in Idaho to obtain information about whether the utility provided each of the services identified above.  The results of Staff’s survey corresponded with that presented in the table included as Exhibit 1 in the testimony of Raymond Hendershot, except for Oregon-Idaho Utilities.  As noted in the amendment to the testimony of Mr. Hendershot, submitted on     October 8, Oregon-Idaho Utilities still has one two-party line that has not been upgraded to single party service.  Other than this exception, each of these utilities does meet each of the minimum criteria for designation as Eligible Telecommunications Carriers.

Oregon-Idaho Utilities has requested the Commission find “exceptional circumstances and the public interest warrant granting continued USF support until such time as single-party service can be provided.”  Staff is aware of the difficulties Oregon-Idaho has faced in upgrading the service to this party line, and agrees that the circumstances that have precluded the upgrade of facilities in Silver City are “exceptional.”

However, Staff is uncomfortable with the open-ended time frame requested by Oregon-Idaho Utilities.  Staff suggests the Commission’s findings also include a time certain by which Oregon-Idaho Utilities is to have either resolved these “exceptional” difficulties, or report to the Commission the steps that it has taken, and proposes to take, to resolve the conflicts that are preventing this upgrade.  Staff suggests one year.

3.  ETC Service Area.

The Petition requested the ETC designation apply throughout each Petitioner’s respective Idaho study areas which include the areas identified in each Petitioner’s Certificates of Public Convenience and Necessity issued by the Commission.

The 1996 Act defines ETC service area in section 102(a)(e)(5) as follows:

(5) Service area defined.--The term ‘service area’ means a geographic area established by a State commission for the purpose of determining universal service obligations and support mechanisms.  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.”

Staff therefore concurs with the request for designation of each Petitioner’s entire Idaho study area, as identified in each Petitioner’s respective Certificate of Public Convenience and Necessity, as the service area for the ETC designation.

4.Suspension of Interconnection and Competition Requirements.

Section 251(c) of the federal Telecommunications Act of 1996 imposes certain obligations on all telecommunications carriers that are designed to promote competition.  However, designation as a rural telephone company automatically exempts the rural telephone company from the Telecommunication Act’s section 251(c) interconnection and resale requirements until (1) the rural telephone company receives a bona fide request from another telephone carrier for interconnection, services, or network elements, and (2) 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).

Section 251(f)(2) of the federal Telecommunications Act of 1996provides further protection for a rural telephone company “with fewer than two percent (2%) of the nation's subscriber lines installed in the aggregate nationwide.” Such rural telephone companies may petition the state commission to suspend or modify the application of “a requirement or requirements of subsection (b) or (c) to telephone exchange service facilities specified in such petition.”  47 U.S.C. § 251(f)(2).

The state commission is required to act upon that petition within 180 days and must grant it where it determines that the suspension or modification is:

(A) is necessary--

(i) to avoid a significant adverse economic impact on users of telecommunications services generally;

(ii) to avoid imposing a requirement that is unduly economically burdensome; or

(iii) to avoid imposing a requirement that is technically infeasible; and

(B) is consistent with the public interest, convenience, and necessity.

47 U.S.C. § 251(f)(2). The federal Telecommunications Act of 1996 did not limit the time allowed for such 47 U.S.C. § 251(f)(2) suspensions.

Idaho Code § 62-615(2) implements this federal provision by limiting such Commission granted suspensions or modifications for application of a rural carrier’s section 251(c) obligations to periods of between three and five years upon petition.  The issues before this Commission are whether a suspension is necessary and, if necessary, whether three years is the appropriate suspension period.  Once any suspension period expires, all other exemptions provided for rural telephone companies by 47 U.S.C. § 251(f) would continue to apply.  In other words, the Commission would consider whether bona fide requests for interconnection, services, or network elements by potential competitors are technically feasible, consistent with section 254 of the Telecommunications Act of 1996 and not unduly economically burdensome.

The Petitioners qualify as rural telephone companies under either Section 3 (a)(2)(47) of the federal Telecommunications Act of 1996 or Idaho Code§ 62-603(10) and Staff has recommended the Commission designate each Petitioner as a rural telephone company in paragraph 1 above.  The Petitioners also have fewer than 2% of the nation’s subscriber lines installed in the aggregate nationwide and, thus, qualify to petition the Commission for the suspension provided by 47 U.S.C. § 251(f) and Idaho Code§ 62-615(2).

Staff believes that the interconnection and competition requirements of Section 251(c) are likely to cause the petitioning companies to incur significant costs that represent an undue economic burden.  Recovery of these costs could result in significant rate increases to the customers of these companies, and to the extent that such costs are recovered through state and federal universal service funds, all other users of telecommunications services as well.  Therefore, this suspension is necessaryto avoid a significant adverse economic impact on users of telecommunications services generally and to avoid imposing a requirement that is unduly economically burdensome,and is consistent with the public interest, convenience, and necessity.

Pursuant to Idaho Code§ 62-615(2), the Petitioners petitioned the Commission to suspend the application of their section 251(c) obligations under the federal Telecommunications Act for a period of three years.  Staff recommends the Commission grant the Petitioners’ request to suspend application of the section 251(c) obligations for three years.

5.Suspension of Toll Control Requirement.

The petition requested the Commission to suspend or waive any requirement that the ITAC’s provide “toll control.”

The FCC included toll limitation as one of the services that must be provided in order to be eligible for the federal universal service support mechanisms.  The FCC’s definition of toll limitation includes both toll blocking, which allows customers to block toll calls, and toll control, which allows customers to limit in advance their toll usage per month or billing cycle.

Mr. Hendershot’s testimony indicates that each of these utilities has the ability to provide toll blocking, but not toll control.

The FCC acknowledged that many utilities may not currently possess the ability to provide toll limitation services and authorized state commissions to grant a waiver of this requirement in section 54.101(c).

State commissions should grant such a request only upon a

finding that exceptional circumstances prevent an otherwise

eligible telecommunications carrier from providing single

party service, access to 911 service or toll limitation.  The

period should only extend as long as the relevant state

commission finds the exceptional circumstances exist and

should not extend beyond the time that the state commission

deems necessary for that eligible telecommunications carrier

to complete network upgrades.

The provision of toll control requires a substantial integration between the central office switch and the billing records of the customer.  None of the Petitioners currently has this ability and significant upgrades to the equipment and/or procedures used by the Petitioners will be required in order to provide toll control services.  Such upgrades can not reasonably be expected to be implemented in a short period of time.

Staff’s experience with the provision of toll control by GTE Northwest, Inc. indicates a period of two to three years is appropriate for the introduction of such a complex service.  Therefore, Staff finds these circumstances to be exceptional and recommends the granting of a waiver of the requirement to provide toll control.

Previous experience indicates a significant amount of customer education is required for an effective toll control program.  Implementing such a complex effort without ensuring that all the procedures are in place and that proper staff and customer education have been completed invites customer confusion, rather than acceptance.  The Petitioner’s indicated that toll blocking is being provided, and did not seek a waiver for this feature.  As at least one form of toll limitation will be available to the Petitioner’s customers, Staff believes there is no need to rush the implementation of toll control, but that it should be implemented in a controlled and orderly manner.  Staff recommends the waiver be provided for the entire three year period requested by the Petitioners.

6.Settlement Conference

The petition requested the Commission to provide for a settlement conference at which the Petitioners, interested parties and the Commission Staff can verify the proper boundaries within which the ETC designations and suspensions can apply, and produce maps of the same.

Staff’s recommendation is to concur with the ITAC’s request to use these companies’ entire service areas as represented in their respective Certificates of Public Convenience and Necessity as the service areas for ETC designation.  While Staff has not performed a rigorous examination of the service area descriptions contained in these Certificates, Staff believes these descriptions are adequate.  Each of these service area descriptions were examined in a separate proceeding when the respective Certificates were granted, or amended (except Westel and Fremont, which have cases currently pending on this issue).  Therefore, Staff does not believe an extensive analysis of these descriptions is necessary at this time.

However, Staff is aware that maps of these service areas may prove to be useful to all, and that discrepancies may have gone unnoticed in these earlier proceedings.  Staff is certainly willing to meet with the Petitioners and other interested parties to verify these boundary descriptions and to assist in the preparation of maps of these service areas.  Staff recommends that such discussions be conducted on an informal basis, and unless discrepancies are found that need to be corrected, no formal proceedings should be necessary.

SUMMARY OF STAFF RECOMMENDATIONS

Staff recommends:

1.Each of the Petitioners be designated as a “Rural Telephone Company.”

2.Each of the Petitioners be designated as an “Eligible Telecommunications Carrier.”

3.The Petitioner’s service area for ETC status include their entire study areas, as described in their respective Certificates of Public Convenience and Necessity.

4.The application of 47 U.S.C. § 251(c) be suspended for a period of three years, beginning January 1, 1998 for each of the Petitioners.

5.The Petitioner’s request for a waiver of the requirement to provide toll control be granted for a period of three years.

6.Oregon-Idaho Utilities be granted a waiver of the requirement to provide single party service throughout its service area for a period of one year.

7.Staff, the Petitioners and interested parties work informally to produce maps and other descriptions of the Petitioners service areas, and that formal proceeding be initiated only if these informal efforts uncover and discrepancies or other issues requiring Commission action.

DATED  at Boise, Idaho, this            day of November, 1997.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Cheri C. Copsey

Deputy Attorney General

Technical Staff:  Wayne Hart

CC:WH/umsic/comments\gnrt9717.ccw