DECISION MEMORANDUM

TO:COMMISSIONER HANSEN

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WORKING FILE

FROM:CHERI C. COPSEY

DATE:DECEMBER 9, 1997

RE:IN THE MATTER OF IDAHO TELEPHONE ASSOCIATION’S REQUEST ON BEHALF OF ITS MEMBERS TO BE DESIGNATED AS ELIGIBLE TELECOMMUNICATION CARRIERS - CASE NO. GNR-T-97-17.

If the Commission designates these Idaho Telephone Association’s LEC members,as eligible telecommunications carriers (ETC), then each Petitioner would be eligible to receive federal universal service support.  Each LEC asserts that it meets the requirements for designation as an ETC with one exception discussed below.(footnote: 1)  The Petitioners requested that the Commission issue its Order designating each as an ETC no later than January 1, 1998.  The Petitioners further requested that they be granted waivers of toll control requirements and 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.

BACKGROUND

Before a telecommunications carrier may receive federal universal service support, it must be designated as an “eligible telecommunications carrier” (ETC) 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: 2) 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 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).

IDAHO TELEPHONE ASSOCIATION’S PETITION

On September 11, 1997, Idaho Telephone Association 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” and as rural telephone companies pursuant to the federal Telecommunications Act of 1996 in their respective study areas as identified in each member

LEC’s respective Certificate of Public Convenience and Necessity.(footnote: 3)  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.  Those members 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.  On October 22, 1997, the Commission ordered the Petition be processed under Modified Procedure (IDAPA 31.01.01.201 through -.204.) and gave all persons twenty-one (21) days to submit written comments.  Order No. 27175, issued October 22, 1997.  Staff filed comments recommending granting the Petition and no other persons filed comments.

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 do 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.  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 2 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 of 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 for a period of three years.  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 Act 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.

Staff has already recommended that these Petitioners be designated as rural telephone companies.  Staff therefore concurs 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.  Fremont and Westel both have pending applications for new Certificates of Public Convenience and Necessity reflecting newly acquired exchanges and unserved areas.  Case Nos. FRE-T-97-1 and WTL-T-97-1.  Staff recommended granting those applications.  Therefore, if the Commission grants those applications, the ETC service 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.

Commission Decision

Does the Commission want to designate each member of the Idaho Telephone Association as a rural telephone company?  Does the Commission want to suspend the requirements of section 251(c) of the Telecommunications Act of 1996 for three years?  Does the Commission want to grant ETC status to each member of the Idaho Telephone Association?  Does the Commission want to waive the toll control requirement for a period of three years?  Does the Commission want to designate the ETC service area as each Idaho Telephone Association member’s study area as described in its respective Certificate of Public Convenience and Necessity?  Does the Commission want to grant Oregon-Idaho Utilities a waiver of the requirement to provide single party service throughout its service area for a period of one year?

If the Commission grants Westel’s and Fremont’s application for new Certificates of Public Convenience and Necessity in FRE-T-97-1 and WTL-T-97-1, does the Commission want Westel’s and Fremont’s ETC service area to be the area described in those new Certificates of Public Convenience and Necessity?

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Cheri C. Copsey

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**FOOTNOTES**

1:

Each Petitioner requests that the Commission grant it a “toll control” waiver.

2:

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.

3:

Fremont and Westel both have pending applications for new Certificates of Public Convenience and Necessity reflecting newly acquired exchanges and unserved areas.  Case Nos. FRE-T-97-1 and WTL-T-97-1.  Staff recommended granting those applications.  Therefore, if the Commission grants those applications, any ETC area designated by the Commission for Fremont and Westel should include those newly certificated areas.