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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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| IN THE MATTER OF DESIGNATING SERVICE AREAS FOR THE PURPOSES OF RECEIVING 1998 TELECOMMUNICATIONS UNIVERSAL SERVICE FUNDS AND IN COMPLIANCE WITH THE FEDERAL TELECOMMUNICATIONS ACT OF 1996. | )  )  )  )  )  )  )  ) | CASE NO. GNR-T-98-8  COMMENTS OF THE  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. 27632, the Notice of Modified Procedure in Case No. GNR-T-98-8, issued July 16, 1998, submits the following comments.

On July 6, 1998, Commission Staff recommended the Commission open a new docket to consider how a “service area” for an eligible telecommunications carrier (“ETC”) should be determined by the Commission.  The service area is that geographic area in which an ETC must offer universal services throughout in order to be eligible to receive 1998 Telecommunications Universal Service Fund (“1998 Telecommunications USF”) support and to receive federal USF. Under both state and federal law, the Commission has the authority to designate the service area.  In Order No. 27632, the Commission opened this docket to receive public comment.

BACKGROUND

The 1998 Legislature amended Title 62 to create a1998 Telecommunications Universal Service Fund.  See Idaho Code §§ 62-610A through F.  This new USF differs considerably from the Idaho USF that currently provides high cost support to rural ILECs.  See Idaho Code § 62-610.  Distributions from the present Idaho USF are generally calculated to meet residual revenue requirements for fully regulated Title 61 rural ILECs whose residential and small business rates are 125% of the weighted statewide average rates.  This Idaho USF will be phased out sometime after January 1, 2001. Idaho Code § 62-610F(4).

Distributions from the 1998 Telecommunications USF will not be related to revenue.  Instead distributions from the 1998 Telecommunications USF will be used to defray the costs of providing universal service to customers within certain geographic areas -- “support areas” -- determined by the Commission to be high cost.(footnote: 1)  Idaho Code §§ 62-610B(4) and 62-610F(2).  Those costs will be calculated using a forward-looking cost methodology adopted by the Commission.  Id.On December 27, 1997, the Commission opened a docket to consider how costs will be calculated using a “forward-looking cost methodology.”  Case No. GNR-T-97-22.  That case is still open and under Commission consideration.

In order to be eligible to receive this 1998 Telecommunications USF support, LECs (whether an ILEC or a CLEC) must be designated by the Commission as an eligible telecommunications carrier (“ETC”) and offer to provide “universal service” throughout the service area for which the designation is received.(footnote: 2)  Idaho Code § 62-610B(1).  The Commission is required to designate geographic “service areas” within which ETCs are obligated to offer and provide universal services.  In this docket the Commission will determine the service areas within which ETCs seeking 1998 Telecommunications USF must provide those “universal services.”

Likewise, similar federal provisions also give state commissions authority to designate the geographic areas or service areas within which telecommunications carriers seeking federal USF must provide certain core universal services designated by the FCC.  47 U.S.C. § 214(e).  In this docket, the Commission should determine whether the service area designated by the Commission for federal purposes should be the same as the service area it designates for 1998 Telecommunications USF purposes.

DISCUSSION

As new companies begin to offer telephone service in competition with non-rural ILECs, the Commission has two distinct roles.  First, it fulfills its traditional role.  It determines whether a CLEC’s application for a Certificate of Public Convenience and Necessity to operate within the ILEC’s certificated territory is in the public interest and whether conditions are necessary for that Certificate.  Applicants for certificates generally determine what kind of service they will offer (business, residential or other) and designate the geographic area in which they intend to operate.  This encourages competition.  If the applicant does not want to be eligible for 1998 Telecommunications USF, it does not request ETC designation and does not assume universal service obligations.

Subsequent to the passage of the 1998 state legislation and the federal Telecommunications Act of 1996 , however, the Commission has a second function.  It designates those carriers that are obligated to offer “universal services” within a geographic area it designates as a “service area.”  These carriers are called ETCs and once they are designated ETCs, they become eligible for 1998 Telecommunications USF support in certain high-cost areas called “support areas,” as well as, federal USF.  An ETC does not necessarily receive 1998 Telecommunications USF support throughout the service area.  Under the 1998 Telecommunications USF, an ETC only receives 1998 Telecommunications USF support for providing universal services in the Commission designated “support areas.”  If a CLEC does not want to be eligible to receive USF support, it is not required to be designated as an ETC and assume the universal service obligations.

Idaho 1998 Telecommunications USF support, like the federal USF, is designed to increase subscribership to universal service and is fully funded by statewide, uniform customer surcharges.  It is also designed to encourage competitive entry into the local exchange market by converting implicit subsidies (e.g., low cost area rates that subsidize high cost area rates or high long distance access rates that subsidize low local rates) into explicit subsidies (USF support) available to all ETCs.  Implicit subsidies are not generally related to costs.  In a fully regulated company explicit  cost related rates are not necessary.  Overall rates are set by the Commission to meet overall revenue requirements.

By changing implicit (hidden) subsidies into explicit ones available to those carriers (ETCs) willing to accept the obligation to offer and provide universal services, competitive carriers can enter the market and price their services based on their costs.  Designating the area in which ETCs must offer universal services in order to be eligible to receive USF has a direct effect on the ability for CLEC ETCs to compete.  The larger the area, the greater and more costly the service obligation.  The geographic scope defines the magnitude of barriers to entry to competitors who wish to receive USF support.  Therefore, the Commission should carefully consider the effect on developing competition when designating the geographic area in which every ETC is obligated to offer universal services.

In discussing each state commission’s role in designating ETC service areas for the federal USF, the FCC and the Joint Federal-State Board recommended that the service area at least be “sufficiently small to ensure accurate targeting of high cost support and to encourage entry by competitors.” FCC Universal Service Order (FCC 97-157). It further advised against simply designating service areas that fit the contours of the existing or incumbent provider, because new entrants, especially commercial mobile radio service-based providers, might find it difficult to conform their signals or service areas to the precise contours of the incumbent’s certificated area.  This could give the incumbent an advantage and, thus, undermine competition.  Likewise, making the area too small may have a similar effect.  Thus, at a minimum, the FCC recommended service areas be set at the incumbent’s wire center.  This is compatible with most cost models and makes sense since any CLEC only receives USF support for each line it serves based on the support the ILEC receives for each line.  47 C.F.R. § 54.307.

In Idaho, there are only two non-rural ILECs -- U S WEST Communications, Inc. and GTE Northwest Incorporated.(footnote: 3)  The Commission previously designated each of these ILECs as ETCs and designated their service areas as the wire centers within their certificated territory.  Order Nos. 27245 and 27270.  At this time there is no evidence that obligating an ETC to offer and provide universal services throughout the ILEC’s wire center is too large a service area or that it would create a barrier to competition.  Moreover, each CLEC operating within GTE’s or U S WEST’s territory, whether it is by definition “rural”(footnote: 4) or non-rural, should have the same universal service obligations as the ILEC if it requests ETC designation.  This is the only way to promote access to universal services at just and reasonable rates and to create a competitively and technologically neutral funding mechanism.

It is not timely to determine what support areas should be designated at this time.  Support areas are those geographic areas in which ETCs receive USF support for providing universal services.  Idaho Code § 62-610E.  Support areas are high-cost areas for which ETCs serving such area may receive financial assistance from the 1998 Telecommunications USF.  Idaho Code § 62-610B(4).  In designating those areas, the Commission must consider “population distribution, geographic factors, cost model capabilities and other relevant considerations in making such a determination.”  Id.  At this time, no cost model has been chosen.  Those factors that support a designation of a support area are fact based.  The Commission should not designate support areas until those facts are established.

STAFF RECOMMENDATION

Staff recommends that the current service areas already designated for the non-rural ILECs, GTE and U S WEST, remain the wire centers.  Staff further recommends all CLECs requesting ETC designation within GTE’s and U S WEST’s existing territory be obligated to offer and provide universal service within the appropriate wire center in order to be designated as an ETC.  Finally, Staff recommends that the geographic areas designated by the Commission as service areas for 1998 Telecommunications USF purposes be the same as those designated for federal USF purposes.  This recommendation does not affect the existing service areas previously designated for rural ILECs.  Since most of the rural ILECs have already requested and received a three year exemption from the requirements of 47 U.S.C. § 251(c), it is not necessary to address the designation of smaller areas than the rural ILECs’ existing study areas at this time.

DATED  at Boise, Idaho, this            day of August 1998.

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Cheri C. Copsey

Deputy Attorney General

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**FOOTNOTES**

1:

 Actual 1998 Telecommunications USF support is established for “support areas.”  “Support areas” are those areas for which financial assistance will be made available from the 1998 Telecommunications USF to assist ETCs to meet universal service obligations.  Support areas are not required to mirror ETC service areas.  “Support areas” are geographic areas designated by the Commission as high-cost areas for which ETCs serving such area may receive financial assistance from the 1998 Telecommunications USF.  Idaho Code §§ 62-610B(4) and 62-610E. In designating support areas, the Commission considers “population distribution, geographic factors, cost model capabilities and other relevant considerations.”  Id.  The designation of support areas is not before the Commission in this docket.  That determination should be made based on the facts associated with specific areas and after a cost model is adopted.

2:

 On July 2, 1998, Staff recommended the Commission open a docket to define “universal services.”  Idaho Code § 62-610B(6).  The Commission opened GNR-T-98-7 on July 7, 1998.  Order No. 27620.  All comments have been filed and the case is ripe for decision.

3:

 This docket does not address the designation of service areas for areas served by incumbent rural LECs.  The federal Telecommunications Act of 1996 defines a rural ILEC’s service area as the study area established by the Commission and the FCC.  47 U.S.C. §214(e)(5).  Study area boundaries are important primarily because ILECs perform jurisdictional separations at the study area level.  For jurisdictional separation purposes, the FCC froze all study area boundaries effective November 15, 1984.  The FCC took that action primarily to ensure that ILECs do not set up high-cost exchanges within their existing service territories as separate study areas to maximize interstate cost allocations.  An ILEC must apply to the FCC for a waiver of the frozen study area rule if it wishes to sell, purchase or establish an exchange.  In evaluating petitions seeking a waiver of the rule freezing study area boundaries, the FCC employs a three-prong standard:  first, the change in study area boundaries must not adversely affect the US support program; second, the state commission having regulatory authority over the exchange(s) to be transferred does not object to the change; and third, the public interest supports the change.

4:

Idaho Code §62-603.

(10) “Rural telephone company” means a local exchange carrier operating entity to the extent that the entity:

 (a) Provides common carrier service to any local exchange carrier study that does not include either:

 (i) any incorporated place of ten thousand (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 fifty thousand (50,000) access lines;

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

 (d)  Has less than fifteen percent (15% ) of its access lines in communities of more than fifty thousand (50,000) on the date of enactment of the federal telecommunications act of 1996.