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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-98-8REPLY COMMENTS OFTHE 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 reply 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.  MCI Telecommunications Corporation, GTE Northwest, Inc., AT&T Communications of the Mountain States, Inc., Idaho Telephone Association (“ITA”), Potlatch Telephone Company, Troy Telephone Company, Century Telecommunications of Idaho, Citizens Telecommunications Company of Idaho, and Staff filed initial comments.

ARGUMENT

There are three basic issues before the Commission: the Commission’s designation of “service area” for non-ruralincumbent local exchange carriers (“ILECs”), the designation of “service area” for rural ILECs, and the relationship between an ILEC’s designated “service area” and the designation of a “service area” for a competitive local exchange carrier (“CLEC”) operating within the ILEC’s study area.(footnote: 1)

As a general proposition, GTE, U S WEST, and Staff supported designation of the non-rural ILEC’s wire center as its “service area.”  ITA suggested, as an alternative, that in some areas, the appropriate designation would be a “service area” containing 1000 customer lines. AT&T suggested that non-rural ILECs retain their current study areas as their “service area.” MCI, Potlatch, Troy, Century, and Citizens expressed no opinion.

With the exception of MCI, all parties supported retaining each rural ILEC’s current study area as its “service area” at this time.  MCI expressed no opinion.

The more controversial issue is the relationship between an ILEC’s designated “service area” and the designation of a “service area” for a CLEC operating within the ILEC’s study area. Both AT&T and MCI urged the Commission to allow each CLEC to designate its own “service area.”  They argued this would promote competition.  Staff, U S WEST, and GTE advised the Commission that a CLEC’s “service area” is by definition the same as the ILEC’s “service area” in which it operates.  While ITA did not directly address this issue, its discussion of how the Commission designates a “service area” implies that it also understands a CLEC’s USF obligations similarly.  MCI, Potlatch, Troy, Century, and Citizens expressed no opinion.

All these issues can only be understood within the context of the Federal Telecommunications Act of 1996, the 1998 Idaho Telecommunications Universal Service Fund statute, Idaho Code§§ 62-610A through F, and the Commission’s continuing role in certificating new entrants to the telephone market. There is an important distinction between new entrants that simply intend to compete by providing whatever service they intend to offer and those entrants that want to be eligible for USF funds.  The Commission’s role is different in each situation.  Both MCI and AT&T ignore that distinction.

Applicants for certificates that do not intend to seek USF (whether federal USF or Idaho 1998 Telecommunications USF) generally can 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.

However, in order to be eligible to receive Idaho 1998 Telecommunications USF support generated by customer provided surcharges, a LEC (whether an ILEC or a CLEC) can not limit the kind of service it must offer and provide and cannot limit the geographic area in which that service must be offered.  In Order No. 27715 (Case No. GNR-T-98-7) dated September 8, 1998, the Commission designated those “universal services” that any ETC must offer in order to be eligible to receive Idaho 1998 Telecommunications USF support.  The issue in this docket is in what geographic area must an ETC offer those services.  If a LEC does not intend to seek USF, it will not be affected by this decision.  Idaho Code§ 62-610B(1).

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.

Finally, some commenters are confused over the difference between a “support area” and a “service area” and suggest they should be the same.  Once  a carrier is designated an ETC, it becomes 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.” Idaho Code §§ 62-610B(4) and 62-610E.  It is not appropriate to determine what “support  areas” the Commission should designate at this time, because 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 and 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.  Moreover, as the FCC recently noted, the urgency to implement “high cost” explicit support does not exist because “[n]o convincing evidence has been presented to the Commission [FCC] to show that circumstances such as the development of local competition will significantly affect the support flows” and during the interim, both non-rural and rural carriers will continue to receive support which are apparently sufficient to produce affordable rates.  In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45.  Order and Order on Reconsideration.  Order No. 98-160, ¶ 8 (July 17, 1998).

A.The Commission should designate the “service area” for non-rural ILECs at the wire center.

Staff, GTE and U S WEST support retaining the Commission’s earlier designation of the wire center as the “service area” for the two ILECs.  Order Nos. 27245 and 27270.  AT&T suggested that non-rural ILECs retain their current study areas as their “service area.”  The Commission should reject AT&T’s suggestion.  Staff believes that the current non-rural ILEC study areas are too large and that using the study area would discourage competition.  Staff agrees with the FCC and the Joint State-Federal Board that designation of the entire study area is not necessary to preserve and advance universal service.

ITA alleged that while retaining the wire center as the appropriate “service area” may have the advantage of being readily identifiable, it “imposes entry barriers for facilities based competitors, particularly in larger urban wire centers” and a CLEC will be required to design a system that is larger than the ILEC’s “in order to meet the dictates of efficient design principles while encompassing the entirety of a wire center.”  ITA argued the facilities based CLEC would be required to either enter the resale market in the portion of the wire center it could not serve or forego an ETC designation.

Instead, ITA suggests that CLECs “serve the lesser of an entire ILEC wire center or a contiguous area containing a specified number of potential customers.”  It proposed that a “reasonable minimum number of customers would be approximately 1,000.”

The problems associated with ITA’s suggestion are multiple.  First, there is no evidence to support using an arbitrary number of customers, like 1,000.  Second, “1,000 customers” is not a geographic area like a census block, or wire center or sub-wire center.  It is not easily identifiable and would be an administrative nightmare.  Moreover, ITA does not explain how such “geographic” boundaries would be adjusted as populations continue to grow.  The “service area” designated by the Commission must be geographically based and easily identifiable.  Therefore, the Staff opposes ITA’s recommendation.

Finally, Staff notes that the FCC advised state commissions as follows:

We therefore encourage state commissions not to adopt, as service areas, the study areas of large ILECs.  In order to promote competition, we further encourage state commissions to consider designating service areas that require ILECs to serve areas that they have not traditionally served.  We recognize that a service area cannot be tailored to the natural facilities-based service area of each entrant, and we note that ILECs, like other carriers, may use resold wholesale service or unbundled network elements to provide service in the portions of a service area where they have not constructed facilities.

FCC Universal Service Order, ¶190. (Emphasis added).  Therefore, Staff recommends that the Commission designate each ILEC’s wire center as the “service area.”

B.The Commission should retain the existing study areas of rural ILECs as their “service areas” at this time.

No party suggested that there is any evidence that at this time the Commission should designate something other than the rural ILEC’s study area as its “service area.”  Therefore, the Commission should retain the existing study areas of rural ILECs as their “service areas” at this time.  This does not preclude the Commission from re-evaluating this decision at a later time.  Certainly, as competition moves into the rural areas and as the Commission adopts a method for determining USF support in rural areas, it may be appropriate to designate a different “service area” for rural ILECs.

C.A CLEC is obligated to offer and provide universal services within the ILEC’s “service area” if it intends to be eligible for USF as an ETC.

Each CLEC, whether it is by definition “rural”(footnote: 2) or non-rural, operating within an ILEC’s existing study area, 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.  Moreover, 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.  Therefore, the Staff opposes MCI’s and AT&T’s assertion that CLECs designate their own “service areas.”  Only the Commission has authority to designate each LEC’s “service area.”  Idaho Code § 62-610D(2); 47 U.S.C.§214(e)(2).  It cannot and should not delegate that authority to a CLEC or to any other entity.

It is also clear that both Congress and the FCC contemplated that the CLEC’s and the ILEC’s  “service area” be the same for several reasons.  First, there would be no reason to designate an ILEC’s “service area” as smaller than its existing study area because the ILEC, by definition, is already required to serve its entire study area.  The only reason that limiting the “service area” would have any effect on competition is if the ILEC’s “service area” must be the same as the CLEC’s.  Second, in discussing retaining the current study areas for rural ILECs, the Federal-State Joint Board wrote:

[p]otential “cream skimming” is minimized because competitors, as a condition of eligibility, must provide services throughout the rural telephone company’s study area.

In the Matter of Federal-State Joint Board on Universal Service, CC Dkt. 96-45, ¶172.  The FCC adopted the Joint Board’s recommendation and said:

We agree with the Joint Board that, if competitors, as a condition of eligibility, must provide services throughout a rural telephone company’s study area, the competitors will not be able to target only the customers that are the least expensive to serve and thus undercut the ILEC’s ability to provide service throughout the area.

Universal Service Order, ¶189.  With respect to non-rural ILECs, the FCC also said:

We agree with the Joint Board that, if a state commission adopts as a service area for its state the existing study area of a large ILEC, this action would erect significant barriers to entry insofar as study areas usually comprise most of the geographic area of a state, geographically varied terrain, and both urban and rural areas.  We concur in the Joint Board’s finding that a state’s adoption of unreasonably large service areas might even violate several provisions of the Act.  We also agree with the Joint Board that, if a state adopts a service area that is simply structured to fit the contours of an incumbent’s facilities, a new entrant, especially a CMRS-based provider, might find it difficult to conform its signal or service area to the precise contours of the incumbent’s area, giving the incumbent an advantage.

Universal Service Order, ¶185.  Moreover, the FCC also suggested that “service area” designations need not be directly related to the ILEC’s precise study area contours and said:

In order to promote competition, we further encourage state commissions to consider designating service areas that require ILECs to serve areas that they have not traditionally served.  We recognize that a service area cannot be tailored to the natural facilities-based service area of each entrant, and we note that ILECs, like other carriers, may use resold wholesale service or unbundled network elements to provide service in the portions of a service area where they have not constructed facilities.

Id.  Therefore, the Staff recommends a CLEC’s “service area” must be the same as the ILEC’s “service area.”

STAFF RECOMMENDATION

Staff continues to recommend that the current “service areas” already designated for the non-rural ILECs, GTE and U S WEST, remain the wire centers.  Staff further recommends that the existing study areas for rural ILECs be retained as designated “service areas” at this time.  Staff also  recommends all CLECs requesting ETC designation within any ILEC’s existing study area be obligated to offer and provide universal service within the ILEC’s same “service area” 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.

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

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Cheri C. Copsey

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**FOOTNOTES**

1:

  A study area is a geographic segment of an ILEC telephone operations.  Generally, a study area corresponds to an ILEC's entire service territory within a state.  Thus, ILECs operating in more than one state typically have one study area for each state, and ILECs operating in a single state typically have a single study area.  Study area boundaries are important primarily because ILECs perform jurisdictional separations at the study area level.  For jurisdictional separations 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 or purchase an exchange.

2:

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.