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

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| IN THE MATTER OF THE APPLICATION OF GTE NORTHWEST INCORPORATED IN TARIFF ADVICE 96-15 TO REVISE TOLL RATES AND INTRODUCE TWO NEW INTRALATA CALLING PLANS. | )  )  )  )  )  ) | CASE NO. GTE-T-97-1  ORDER NO.  26905 |

BACKGROUND

On November 19, 1996, the Commission received Tariff Advice 96-15 from GTE Northwest Incorporated (GTE) requesting authority to revise toll rates and introduce two new intraLATA calling plans effective February 11, 1997.  On January 16, 1997, the Commission issued Order No. 26762 suspending the proposed effective date for a period of thirty days plus five months.  On January 31, 1997, the Commission issued a Notice of Modified Procedure soliciting comments in response to GTE’s tariff advice.  Comments were submitted by GTE, the Commission Staff, and AT&T Communications of the Mountain States, Inc. (AT&T).

According to the tariff advice, GTE has proposed to introduce two new calling plans; one for business customers and the other for residential customers.  The plans do not require a minimum monthly fee.  They do provide volume discounts on intraLATA calls.  The plan for residential customers will provide a 10% discount on volumes from $10 to $24.99 per month and 24% on volumes of $25 or higher.  Under the plan for businesses, business calls will be rated on a subminute basis (initial 18 seconds and then 6 second increments) and then discounted.  Business subscribers using the plan on a month-to-month basis will receive a 10% discount on volumes of $25 to $99.99, 15% on volumes of $100 to $100.99 and 20% on volumes of $200 or greater.  The business discounts increase on one-year, two-year and three-year plans.

In addition, GTE proposes to revise its toll rate structure.  New rate schedules are proposed for direct-dialed station-to-station, customer dialed calling card station-to-station, operator handled person-to-person, operator handled station-to-station and coin telephone station-to-station calls.  Each of these schedules has a flat rate of 32¢ per minute for peak and 21¢ per minute for off-peak periods.  GTE’s current time periods are:

Day8:00 a.m. to 5:00 p.m. Monday through Friday

Evening5:00 p.m. to 11:00 p.m. Monday through Friday and Sunday (incurs a 30% discount)

Night11:00 p.m. to 8:00 a.m. Monday through Friday, all of Saturday and all but the evening period on Sunday (incurs a 45% discount).

The new proposed time periods are:

Peak7:00 a.m. to 7:00 p.m. Monday through Friday (32¢ per minute)

Off-PeakAll other times and holidays (21¢ per minute).

GTE Comments

GTE asserts that its proposal (1) is not anti-competitive because other carriers already offer lower rates than what GTE has proposed, (2) is not in violation of Idaho Code § 62-609 prohibiting price squeezes, and (3) can be treated as a tariff advice pursuant to Rule 124 of the Commission’s Rules of Procedure, IDAPA 31.01.01.  Furthermore, GTE asserts that all customers who make intraLATA toll calls in Idaho will benefit from the simplified mileage band structure and the reduced time of day periods.

Responding to AT&T’s proposal that GTE’s tariff advice should be denied on the grounds that it exacerbates an existing anti-competitive situation, GTE points to some AT&T plans that are currently selling toll at flat rates per minute that are lower than GTE’s proposed rates.  For instance, GTE states that the “One Rate Promotion” calling plan offers AT&T customers a 15¢ per minute rate.  The AT&T “Simple Rates Promotion” plan offers residential customers a 10¢ per minute rate.  Therefore, GTE’s proposed rates of 32¢ at peak and 21¢ at off-peak cannot have an anti-competitive effect on AT&T.  GTE also denies AT&T’s allegation that “GTE can compete in virtually every telecommunications market with a start up market share of 100% of all local customers in its service area” and seeks to price squeeze its competitors while maintaining high access rates to its competitors.  GTE states that it is not an interLATA toll provider; its affiliate, GTE Long Distance, competes in the interstate and intrastate toll market as a reseller and must pay the same tariffed access rates that AT&T must pay.  Furthermore, GTE Long Distance does not enjoy 100% of GTE’s interLATA market because of the significant share of “incidental traffic” carried by other carriers using 10XXX dialing.

GTE argues that its proposal passes the imputation test contained in Idaho Code § 62-609 which requires that imputation of access charges “shall be in the aggregate.”  GTE’s imputation analysis shows that the estimated average rate per minute for its MTS and Easy Savings Plans and proposed peak/off-peak structure exceeds the tariffed switched access rates by a margin of over 17%, and, therefore, there is no price squeeze.

Finally, GTE argues that the different proposed rates for its business and residential calling plans are not discriminatory.  Idaho Code § 61-315 provides, in part:

Discrimination and preference prohibited. . .no public utility shall establish or maintain any unreasonabledifference as to rates, charges, service facilities or in any other respect, either as between localities or as between classes of service.  The Commission shall have the power to determine any question of fact arising under this section.  (Emphasis added.)

GTE argues that there are reasonable differences between business and residential customer sets.  GTE argues that the majority of LECs, including GTE Northwest, providing local service in Idaho have different rates for residential and business local access lines which have been  approved by the Commission.

Regarding Staff’s suggestion that the proposed revenue reduction resulting from GTE’s proposal could be used to reduce revenues in areas such as access or local rates, GTE contends that the question of revenue decreases in areas such as access or local rates is irrelevant to this filing and is a non-issue.

Commission StaffComments

Staff expressed concern about the possible deaveraging or discriminatory effect that results from limiting Title 61 services to certain classes of service.  After some discussion with Staff, the Company has submitted revised pages that do not restrict GTE’s Easy Savings Plan for Business to only business customers.  Staff notes, however, that GTE has declined to lift the restriction from its residential plan.

Staff relies on Idaho Code § 61-315, which provides that “[n]o public utility shall establish or maintain any unreasonable difference as to rates, charges, services, facilities or in any other respect, either as between localities or as between classes of service.”  (Emphasis added.)  The Idaho Supreme Court expanded:

Since the Commission has power to regulate and fix charges and rates, but a utility is enjoined from establishing rates or charges which are preferential or discriminatory, it follows by implication that the Commission’s authority may only be exercised in such a way as to fix nondiscriminatory, and non-preferential rates and charges.

Idaho State Homebuilders v. Washington Water Power, 107 Idaho 415, 419, 690 P.2d 350 (1984).  Regarding rate differentiation between classes of service, the Homebuilders court held:

Any such difference (discrimination) in a utility’s rates and charges must be justified by a corresponding classification of customers that is based upon factors such as cost of service, quantity of electricity used, differences in conditions of service, or the time, nature and pattern of the use.

107 Idaho at 420 (citingUtah-Idaho Sugar Co. v. Intermountain Gas, 100 Idaho 368, 597 P.2d 1058 (1979)).

Staff argues that given the limitations imposed by the Supreme Court in Homebuilders, there is no justification for limiting GTE’s Easy Savings Plan for Residents to residential customers only.  Staff notes that, historically, rate differentials have been applied to basic local service-related charges based on whether the service is business or residential.  The rationale for these differentials is that business services are larger and more sensitive to outages than are residential services.  Businesses generate most of their calls during peak periods, thus placing greater demands on switching systems and facilities.  Business systems are also more complex and service and maintenance efforts are consequently greater.  Staff believes that these differences generate different costs and different technical support for providing service and, therefore, fit the justification imposed by the Homebuilders case.  Staff argues that there are no differences, however, between a business call and a residential call.  None of the differences (if any) in the cost or facilities required to transmit telephone calls can be attributed to a class of customers such as business or residential.  A difference in rates, terms or conditions, therefore, is discriminatory, Staff contends.  Moreover, Staff fears that allowing this discrimination will eventually result in differences that have harmful effects on rural Idaho customers.

Staff sees no justification for restricting a GTE customer from using a calling plan if that customer is willing to comply with the terms and conditions set by the Company.  Assuming that the rates GTE sets for calls are designed to recover costs and produce a profit, any stimulation created by a special calling plan should result in greater revenue whether the caller is a business or a residential customer, Staff asserts.

Staff notes that GTE has argued that a number of Title 61 and Title 62 companies have implemented similar discriminatory rates.  Staff has attempted to ensure when accepting such rates for filing, however, that even though rates may be designed for a particular class of service, a customer outside of that class may subscribe to the plan in question if the customer so requests and meets the requirements of that service.  Most plans require volumes or monthly recurring charges that make them undesirable to classes other than those for which they are designed.

Revision of Message Telecommunications Services

GTE also proposes to restructure its message telecommunications services tariff.  Currently GTE’s rate schedule for MTS is as follows:

RateInitialEach Add'l

MileageMinute   Minute

 0 - 10.16.07

11 - 16.22.10

17 - 23.31.16

24 - 30.38.27

31 - 40.46.34

41 - 55.51.38

56 - 70.54.43

71 & over.58.45

GTE provides a 30% discount for evening rates (5:00 p.m. to 11:00 p.m. weekdays and Sundays) and a 45% discount for night and weekend rates (11:00 p.m. to 8:00 a.m. weekdays, all day Saturday and 11:00 p.m. to 5:00 p.m. Sundays).

GTE proposes flat rates of 32¢ per minute during peak times and 21¢ for off-peak times.  Peak times are identified as between 7:00 a.m. and 7:00 p.m. Monday through Friday.  Off-peak times are all other times and holidays.  GTE contends that although the “off-peak discount will begin two hours later and end one hour earlier during the week, the discount will be increased from 30% to more than 34%.”  The Company contends that this will be beneficial for most residential customers and some business customers.  Staff notes that calls made in the 24-30 mile band, however, will almost always cost more in GTE’s proposed plan than they do now, as will most calls made between 7:00 a.m. and 8:00 a.m. and between 5:00 p.m. and 7:00 p.m.

Staff notes that the Commission has received a number of calls and letters from customers opposed to GTE’s proposal.  Nearly all of them objected to losing the evening and nighttime discounted hours they currently enjoy, although some objections appear to be based on the misimpression that GTE’s proposal would take away from their ability to use the Pacific/Mountain time zones to their advantage.  In actuality, GTE’s plan only applies to intraLATA calling and, as such, will not cross the time zone.

The net annual result of GTE’s proposed tariff, as the Company calculates it, would be a revenue reduction of $737,459.  Of this, a large amount is attributable to reduced MTS revenue with a significant number of minutes projected to migrate to one of GTE’s new toll plans.  Staff has raised the issue of whether a decrease of nearly $750,000 per year to MTS rates is in the public interest or whether consumers may be better served by applying a decrease to local exchange rates or to access rates.  Staff notes that FCC rules regarding interstate access rates are expected soon and one likely result will be a downward pressure on intrastate access rates as well.  GTE’s proposed reduction of revenue due to its revised toll structure implies that it can afford to forego this revenue without harming customers, Staff argues.

Finally, Staff notes that AT&T has objected to GTE’s proposal on the grounds that GTE’s access rates exceed its proposed rates during the hours of 7:00 p.m. and 11:00 p.m.  GTE’s proprietary cost-support information calculates that a weighted average for its toll service will produce a small excess of revenue over access rates.  Staff does not know how much other cost AT&T incurs to provide toll within the GTE area, but Staff notes that much lower access costs in U S WEST’s and other service areas have not produced notably lower toll rates for AT&T calls.

Staff notes AT&T’s argument that the slim margin of revenue over access charges that GTE proposes results in a price squeeze and allows no room for interexchange carriers to price their calls above cost and still compete with GTE.  Staff argues, however, that AT&T neglects to say that to maintain averaged pricing within the state of Idaho, the access charges AT&T should use in its calculations are the weighted averages of all access charges in the state.  According to the 1996 Universal Service Report, the statewide average access rate is 12.9¢ for an intrastate call.  AT&T’s MTS rates range from 21¢ per minute for a discounted nighttime call in a 23 to 55 mile band to 52¢ for a daytime call over distances greater than 292 miles.  AT&T’s margin of revenue over average statewide access cost ranges from 8¢ to 30¢ per minute.

Staff agrees that GTE’s narrow margin could be interpreted as a price squeeze if it were only considered for the GTE service area.  AT&T and other interexchange carriers, however, do not compete solely on an intraLATA basis.  Staff states that GTE has submitted confidential exhibits showing that its proposed rates are sufficient to cover its cost of access as well as a contribution to the Company.  Staff notes that GTE is required only to impute its access charges when setting a price floor.  Thus, there is no justification to reject GTE’s proposed tariff on the basis of the narrow margin.  Staff believes that it would not be reasonable to expect GTE to impute an additional 8¢ or more in order to keep its rates at a level where AT&T or other interexchange carriers could “compete.”

Staff acknowledges that GTE’s proposal is an attempt to create an attractive package for its customers as the Company nears the implementation of its interLATA equal access program.  Staff believes that the Company’s proposal will not result in a noncompetitive environment where other carriers will not provide service to GTE’s customers.  Competitive carriers will carry calls across the state and they will average their rates based on averaged access charges and offer interstate as well as intrastate toll packages that are attractive to GTE’s customers, Staff believes. Regarding GTE’s claim that its reduction of toll rates will reduce customer costs, Staff notes that those customers who make calls between 7:00 and 8:00 in the morning and between 5:00 and 7:00 in the evening will see increased costs due to the removal of GTE’s time of day discounts during the period before its proposed off-peak rates are effective.  This change will not, however, affect the customer’s interLATA calling which is frequently used to make calls to businesses in southern Idaho.  Those customers with significant calling volumes can see further savings if they use GTE’s new calling plans.  Staff believes that customers will be willing to adjust their calling patterns to work around GTE’s proposed peak and off-peak time periods once they understand that their interLATA calling patterns will not be affected.

Staff also expressed concern about the overall effect of GTE’s proposed rate changes over time.  The FCC has opened a Notice of Proposed Rulemaking (CC 96-262) that will set rules for interstate access charge reform for all incumbent local exchange carriers that will, hopefully, result in greater toll competition.  GTE has indicated that it plans to adjust its access rates but is not willing to make a commitment until after the FCC rules are in place.  As a regulated company, GTE’s rates are set at a level to recover costs.  Unless the Company is overearning by a significant amount, it is likely that decreasing access rates will result in increasing rates for other services in order to maintain revenue neutrality.  Staff contends that it is implicit in this toll proposal that GTE is overearning by nearly $750,000, at a minimum.  Staff suggests that it could potentially be of greater benefit to the public interest to use this money to offset anticipated increases in other services.  Staff concedes, however, that there will not be enough evidence to evaluate this possibility until GTE brings its access rate plan to the Commission.

Staff concludes that there are two options: First, the Commission might defer approval of GTE’s restructured toll rates until the Commission has had the opportunity to consider GTE’s access rates and any effect that revisions will have on local rates.  Second, the Commission could approve GTE’s proposal with the knowledge that the new rates are subject to revision when the Commission evaluates the Company’s adjustment to its access rates.  Either way, Staff proposes that GTE be required to bring its plan for revised access rates to the Commission by the end of the year.

AT&T Comments

AT&T contends that the Commission must first decide if GTE’s proposed rates are below its cost of providing service and, second, if the proposed rates are anti-competitive and contrary to the public interest.  AT&T contends that these determinations should take place after the matter has been submitted to a full public evidentiary hearing.

AT&T states that it is not able to fully analyze whether all the proposed toll rates are priced above GTE’s cost of service because the Company has rejected AT&T’s request for cost studies submitted to the Commission with the filing of the tariff.  AT&T contends, however, that some rates are clearly below costs based on the underlying cost of toll access service alone.  GTE’s proposed per minute toll rate during the weekday hours of 7:00 p.m. to 11:00 p.m. is 21¢.  During the same time period, the toll access rate charged to a competitive toll carrier to originate and terminate the same call, AT&T argues, is 24¢.  AT&T asserts that it is highly unlikely that when GTE’s other costs of providing toll service are added to the underlying access rates, that the total cost of service provision will be recovered through the toll rate.  AT&T concludes that pricing a competitive service below its cost is anti-competitive and adverse to the public interest.

AT&T contends that GTE’s cost of toll service should be determined in an evidentiary hearing because the Commission has not reviewed GTE’s cost of service and revenue requirements in a rate case setting for nearly ten years.  AT&T argues that a change in service rates of the magnitude proposed by GTE (a $737,459 annual revenue decrease) could not be reviewed for reasonableness with such stale data as exists in the last proceeding, nor with current data which has not been reviewed and found to be reasonable by the Commission.  Consequently, AT&T argues that the Commission should set this matter for an evidentiary hearing and require GTE to submit data supporting its service costs and pricing proposals.

AT&T further argues that it has been more than ten years since GTE’s toll access rates were last reviewed by the Commission.  AT&T contends that GTE’s Idaho intrastate access rates are among the highest of any company in the state and are among the highest of the rates it charges in any state.  AT&T states that access rates have declined dramatically in the interstate arena and in most intrastate jurisdictions over the last ten years as switching and other network costs have declined.  AT&T notes that in Idaho, the average access revenue/minute according to the 1996 Idaho Universal Service Fund Report was 6.427¢ and GTE’s was 11.9387¢.  AT&T concludes that it is anti-competitive to charge access rates in excess of cost, especially when coupled with the parallel anti-competitive practice of setting toll rates below cost.  AT&T suggests that an investigation be opened into the reasonableness of GTE’s access rates.

AT&T Supplemental Comments

On April 3, 1997, AT&T filed supplemental comments.  AT&T contends that House Bill 313 recently enacted by the Idaho Legislature and which becomes effective July 1, 1997, directs the Commission to undertake a study of implicit subsidies and to prepare a report for the Governor and Legislature by December 1, 1997.  This, AT&T argues, makes it clear that GTE’s high access rates cannot continue.  AT&T asserts that any excess profits, therefore, should be directed toward reducing access rates and not toward an anti-competitive toll rate reduction as proposed by GTE in this case.  AT&T argues that removing implicit subsidies from access and other rates will result in irrational competitive entry, competitive rates and greater choices for Idaho customers.  AT&T concludes that the Commission should deny GTE’s tariff advice and commence an evidentiary hearing to investigate GTE’s regulated rates and alleged subsidies contained therein.

Commission Staff Reply Comments

On April 4, 1997, Staff filed a Reply to AT&T’s supplemental comments.  Staff notes that GTE’s filing is related to toll rates, not access rates as suggested by AT&T.  Regardless of whether the Commission accepts or rejects GTE’s proposed tariff, Staff contends, access rates will not be affected unless a separate activity is initiated for that purpose.  Staff notes that the cost of providing toll service is a function of access rates and must be addressed in a separate proceeding.  Staff questions the value of holding an evidentiary hearing to determine whether GTE has imputed its access rates.

Regarding House Bill 313, Staff notes that nothing in the legislation requires that the Commission identify and remove subsidies by a date certain.  This does not avoid the need to address the issue but Staff believes there is leeway to process the necessary issues in a more comprehensive manner.

Staff disputes AT&T’s claim that GTE’s proposed toll/calling plan rates are anti-competitive to interLATA carriers.  Staff does not dispute that there may be implicit subsidies in GTE’s access rates but notes that this is not relevant to the present proceeding.  Staff argues that the relevant question is whether AT&T is harmed by GTE’s proposed toll rates even though AT&T offers even lower rates in Idaho.

F I N D I N G S

We find that GTE’s request for approval of Tariff Advice 96-15 to revise its toll rates and to introduce new intraLATA calling plans is fair, just and reasonable and is approved.  We do not wish to withhold the toll relief customers will receive from reduced calling rates while we pursue revisions of GTE’s access rates.  We approve this tariff, therefore, with the understanding that we will review GTE’s access rates later this year.

Regarding the concerns expressed by AT&T, we find that issues related to GTE’s access rates fall outside the scope of this proceeding and will not be resolved here.  As Staff notes, our decision regarding GTE’s toll rates will not affect GTE’s access rates.  We do not overlook the fact that GTE’s access rates are among the highest in the state and must be evaluated.  Our evaluation of these rates will likely be performed coincidentally with our response to forthcoming FCC rules regarding access rates and to Idaho legislation that requires identification of subsidies extant in telephone rates before the end of the year.  We are persuaded, however, by GTE’s assertion that its access rates are recovered by its toll services and, therefore, find that GTE is not in violation of IdahoCode § 62-609.

Regarding Staff’s position that restricting certain customers from GTE’s calling plans is discriminatory, we find that such a limitation in this case is not unreasonable.  Where GTE is providing an unrestricted plan designed for business and another plan to serve only residential customers, GTE is acting in the best interests of both classes of customers.  Such differences and/or distinctions should be scrutinized carefully, however, and our ruling in this regard is limited to the facts of this case.

In conclusion, we find that GTE’s Easy Savings Plan for Residents and its Easy Savings Plan for Businesses, both of which offer volume discounts on toll calls to subscribing customers, be approved as submitted and amended under Tariff Advice 96-15.  We also find that GTE’s proposed toll rate restructure, which will bill a flat rate of 32¢ per minute during peak times (7:00 a.m. to 7:00 p.m.) and a flat rate of 21¢ per minute during off-peak times (7:00 p.m. to 7:00 a.m.) should be approved as submitted in this tariff advice.

O R D E R

IT IS HEREBY ORDERED that the Application of GTE for approval of proposed revisions to its toll rates and two new interLATA calling plans is approved consistent with the terms and conditions set forth above.

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 this Case No. GTE-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 this Case No. GTE-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.

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

                                                                                                                                      DENNIS S. HANSEN, PRESIDENT

                                                                                           RALPH NELSON, COMMISSIONER

MARSHA H. SMITH, COMMISSIONER

ATTEST:

Myrna J. Walters

Commission Secretary

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**COMMENTS AND ANNOTATIONS**

Text Box 1:

**TEXT BOXES**

Office of the Secretary

Service Date

April 29, 1997