(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.  27002 |

On May 20, 1997, AT&T Communications of the Mountain States, Inc. (AT&T) filed a Petition for Reconsideration of the Commission’s Order No. 26905 issued in this proceeding.  In its Order, the Commission approved GTE’s revisions to its toll rates and introduction of two new intraLATA calling plans.  AT&T contends that the Commission should reconsider its approval of GTE’s toll proposal because it unfairly allows GTE to gain market share over competing toll providers while permitting GTE to continue earning inflated access revenues from those same competing providers.

According to AT&T, GTE’s toll proposal will result in an approximate $750,000 reduction in its toll revenue which, AT&T argues, means that GTE is over earning by an equivalent amount.  AT&T further argues that GTE’s access rates are excessively above cost as evidenced by the fact that GTE’s average state access rate is almost double the statewide average access rate.

According to AT&T, House Bill No. 313, effective July 1, 1997, requires that the Commission identify and eliminate implicit subsidies within the rates of incumbent telecommunica­tions providers.  AT&T argues that the fact that GTE’s average access rate per minute is almost double the average state access per minute suggests that those access rates are priced excessively above costs and subsidize other GTE services.  AT&T charges that GTE’s toll rate reduction proposal is an obvious attempt to gain competitive market share over competing toll carriers while it continues to have the ability to charge those competitors exorbitant access rates.  Given the absence of a concurrent proposal from GTE to reduce its access rates by some margin, AT&T argues that the Commission should reject GTE’s toll proposal in its entirety or, at a minimum, defer any approval of the Company’s proposal until the Commission formally reviews GTE’s access rates.

Finally, AT&T takes exception with Commission Order No. 26905 wherein its states:

“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 Idaho Code § 62-609.

Order at p.11.

AT&T argues that § 62-609 is irrelevant to the Commission’s review of GTE’s toll proposal because GTE has not elected to provide its telecommunications services, including basic local exchange service, under Title 62.  Consequently, AT&T argues, GTE remains subject to Title 61 regulation and must charge “just and reasonable” rates for its telecommunications services pursuant to Idaho Code § 61-301.  AT&T argues that GTE’s proposed toll rates are not just and reasonable and, therefore, its toll proposal should be rejected.

According to AT&T, GTE’s proposed rates are unjust because they are below cost.  For example, GTE’s proposed per-minute toll rate during the week day 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 is 24¢.  AT&T concludes 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 recouped through the toll rate.

On June 2, 1997, GTE filed an answer to AT&T’s Petition for Reconsideration.  Initially, GTE notes that AT&T’s Petition is composed of the same arguments that were discussed and rightly rejected by the Commission in Order No 26905.  GTE recognizes that House Bill 313 directs the Commission to study the issue of subsidies, including access charges.  The FCC is also addressing access charges.  GTE believes, however, that the Commission correctly determined that the issue of access charges will be addressed in separate proceedings and should not have a bearing on the toll rates contained in the intraLATA calling plans.

Regarding AT&T’s challenge of the Commission’s reliance on Idaho Code § 62-609, GTE notes that the toll plans are competitive offers and, as such, satisfy the requirements of that statute regardless of whether or not the telephone company is also regulated under Title 61.  Regardless of the applicability of Idaho Code § 61-301, GTE points out that the Commission correctly found that the charges for GTE’s toll plans passed both the “imputation test” and were “just and reasonable.”

FINDINGS

We hereby deny AT&T’s Petition for Reconsideration.  Regarding AT&T’s claim that GTE’s access rates are excessive, Order No. 26905 left no room for doubt that that particular issue  falls outside the scope of this proceeding.  We stated:

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.

Order No. 26905 at p. 11.

In its Petition for Reconsideration, AT&T simply reasserts the arguments set forth in its original comments submitted earlier in this proceeding.  AT&T’s Petition offers nothing new in the way of evidence, facts or legal theories to justify reconsideration of Order No. 26905 on the basis that GTE’s access rates are allegedly excessive.  As discussed below, we find that the proposed reduction to GTE’s toll rates are just and reasonable.  It is unnecessary to determine whether, and to what extent, GTE’s access rates are excessive in order to immediately grant GTE’s toll customers relief in the form of a rate reduction.  We will analyze GTE’s access rates in due course.

AT&T’s argument that the Commission misapplied Idaho Code § 62-609 and that GTE’s proposed toll rates are not just and reasonable is flawed for several reasons.  First, we note that AT&T itself argues for the application for the imputation test in its original comments submitted to the Commission in this case on February 21, 1997, where AT&T states that “if approved, the resulting toll rates will, in at least some cases, be lower than GTE’s imputed access costs....”  Comments at p. 2.  This is, in fact, a characterization of the imputation test contained in Idaho Code § 62-609.  It is specious for AT&T to now argue, for the first time, that the Application of the imputation test contained in Idaho Code § 62-609 is inappropriate.

In any event, as we found in Order No. 26905, the evidence submitted to us during the course of this proceeding unequivocally establishes that GTE’s toll rates meet both the imputation test and the “just and reasonable” standard contained in Idaho Code §61-301.  See, Order No.26905 at p.10.  Again, AT&T simply reiterates the arguments made in its original comments contending that GTE’s toll rates are unreasonably low.  The only evidence offered in this regard is AT&T’s claim that GTE’s proposed per-minute toll rate during the weekday hours of 7:00 p.m. to 11:00 p.m. is $0.21.  During the same time period, the toll access rate charge to a competitive toll carrier to originate and terminate the same call is $0.24.  AT&T concludes that “other toll rates are slightly higher than the underlying toll access rate.”  Comments at pp. 4-5.

In fact, GTE’s $0.32 peak hour rate (for the hours of 7:00 a.m. to 7:00 p.m., Monday through Friday) is considerably higher than its $0.24 toll access rate.  AT&T is comparing GTE’s discounted toll rate to its access rate when, in fact, the majority of calls are made during peak hours when the toll rate is considerably higher than the access rate.  As noted in Staff’s comments, GTE provided proprietary information showing that its aggregate MTS rates are higher than its access rates per minute.  The imputation test contained in Idaho Code §62-609 states that “imputation shall be in the aggregate on a service by service basis.”  We find the fact that GTE’s aggregate MTS rates exceed its access rates per minute is evidence that GTE’s toll rates are just and reasonable.

Finally, we note that, in some instances, AT&T’s toll rates are considerably lower than GTE’s discounted off-peak rate.  GTE noted in its comments that AT&T’s “Simple Rates promotion” offers a $0.10 per minute rate. GTE Comments at p.4. AT&T never contradicted this contention.  This lends further support to our finding that GTE’s toll rates are just and reasonable.

In light of the foregoing, we find that our ruling set forth in Order No. 26905 to the effect that GTE’s toll rates are just and reasonable is well supported by the record in this case and that AT&T has submitted no new evidence, facts or legal theories establishing that our Order is in error.

O R D E R

IT IS HEREBY ORDERED that AT&T’s Petition for Reconsideration is denied for the reasons set forth above.  Our findings in Order No. 26905 are affirmed.

THIS IS A FINAL ORDER ON RECONSIDERATION.  Any party aggrieved by this Order or other final or interlocutory Orders previously issued in this Case No.  may appeal to the Supreme Court of Idaho pursuant to the Public Utilities Law and the Idaho Appellate Rules.  See Idaho Code § 61-627.

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

                                                                                                                                      DENNIS S. HANSEN, PRESIDENT

                                                                                           RALPH NELSON, COMMISSIONER

MARSHA H. SMITH, COMMISSIONER

ATTEST:

Jean Jewell

Assistant Commission Secretary

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**COMMENTS AND ANNOTATIONS**

Text Box 1:

**TEXT BOXES**

Office of the Secretary

Service Date

June 16, 1997