DECISION MEMORANDUM

TO:COMMISSIONER HANSEN

COMMISSIONER NELSON

COMMISSIONER SMITH

MYRNA WALTERS

TONYA CLARK

DON HOWELL

STEPHANIE MILLER

DAVE SCHUNKE

JOE CUSICK

BIRDELLE BROWN

DAVID SCOTT

WORKING FILE

FROM:BRAD PURDY

DATE:JUNE 9, 1997

RE:CASE NO. GTE-T-97-1; AT&T’S PETITION FOR RECONSIDERATION

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 super- 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 between 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.”

LEGAL ANALYSIS

Idaho Code § 62-609 provides, in pertinent part:

62-609.  Imputed and nondiscriminatory access charges - Commission authority. - (1) A telephone corporation, which provides basic local exchange service, and which also provides message telecommunications service shall impute to itself its prices of special access or private line access and switched access for the use of essential facilities used in the provision of message telecommunications service, special access or private line access services and WATS service or their equivalents....

Idaho Code § 61-301 provides that all charges made by a utility shall be “just and reasonable.”  Rule 331 of the Commission’s Rules of Procedure provides that Petitions for Reconsideration “must set forth specifically the ground or grounds why the petitioner contends that order or rule is unreasonable, unlawful, erroneous or not in conformity with the law, and a statement of the nature and quantity of evidence or argument the petitioner will offer if reconsideration is granted.”

Finally, House Bill 313 provides:

62-623.  Subsidy reform - Universal service - Report to the Legislature.  The commission shall commence a proceeding to:

(1) Identify and quantify implicit subsidies within the rates of incumbent telephone corporations,

...

(2) determine a mechanism for removal of the subisdies from the rates of incumbent telephone corporrations and the creation of explicit subsidy mechanisms,

...

(4) issue a report to the governor and the legislature recommending...desirable legislation concerning...the removal of implicit subsidies from rates and other telecommuncations matters.

Commission Decision

Does the Commission wish to grant AT&T’s Petition for Reconsideration of Order No. 26905?

Brad Purdy

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