WELDON B. STUTZMAN

DEPUTY ATTORNEY GENERAL

IDAHO PUBLIC UTILITIES COMMISSION

472 WEST WASHINGTON STREET

PO BOX 83720

BOISE,  IDAHO  83720-0074

(208) 334-0318

Street Address for Express Mail:

472 W WASHINGTON

BOISE ID  83702-5983

Attorney for the Commission Staff

BEFORE  THE  IDAHO  PUBLIC  UTILITIES  COMMISSION

IN THE MATTER OF THE JOINT APPLICATION)

OF STERLING INTERNATIONAL FUNDING, INC.) CASE  NO.  GTE-T-98-1

DBA RECONEX AND GTE NORTHWEST FOR)

APPROVAL OF AN AGREEMENT FOR )COMMENTS OF THE

INTERCONNECTION PURSUANT TO 47 U.S.C.)COMMISSION STAFF

§ 252(e).)

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COMES  NOW  the Staff of the Idaho Public Utilities Commission, by and through its Attorney of record, Weldon B. Stutzman, Deputy Attorney General, and submits the following comments for the Commission’s consideration in Case No. GTE-T-98-1.

BACKGROUND

On February 23, 1998, GTE Northwest Incorporated (GTE) and Sterling International Funding, Inc. dba Reconex (Reconex) jointly submitted an Interconnection Agreement for approval by the Commission.  The Application indicated that this Agreement was reached through voluntary negotiations and is submitted to the Commission for approval pursuant to Section 252(e) of the Telecommunications Act of 1996 (Act).

Section 252(e) of the Act sets the guidelines for approval of interconnection agreements.  It states:

(e)APPROVAL BY STATE COMMISSION.—

(1)APPROVAL REQUIRED.—Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission.  A State Commission to which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies.

(2)GROUNDS FOR REJECTION.—The State commission may only reject—

(A)an agreement (or any portion thereof) adopted by negotiation under subsection (a) if it finds that—

(i)the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or

(ii)the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity;

47 U.S.C. § 252 (e)

STAFF INVESTIGATION

The Agreement submitted by GTE and Reconex is the first interconnection agreement submitted to this Commission by GTE and a reseller of GTE’s dial tone services.  Staff reviewed the language of the Agreement, and with the exception noted below, did not find any terms or conditions which, if made available to other parties, would be considered discriminatory or inconsistent with the public interest.

The one section of the Agreement that does cause Staff concern is contained on page V-1, paragraph 2.2.1, which states

RECONEX shall not resell Basic Exchange Residential Service.

This information is also repeated in the section for each exchange of the matrix in Appendix A, which indicates that each of the different local calling plan options available in that exchange are not available for resale.

Staff finds this section of the Agreement to be inconsistent with the requirements contained in Section 251 of the federal Telecommunications Act of 1996, which states in

section (b):

 (b) Obligations of All Local Exchange Carriers.--Each local exchange carrier has the following duties:

(1) Resale.--The duty not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of its telecommunications services.

Staff understood that the primary market for Reconex’s service would be residential customers, and contacted Reconex’s representative, Mr. William Braun, to inquire about this limitation.  Mr. Braun indicated GTE does make its basic local exchange service for residential customers available for resale, despite this language.  He indicated the same language was included in Reconex’s agreements in other states, which had been approved by the Commissions in those states, and that Reconex was reselling GTE’s residential service in those states.  He indicated GTE insisted upon the inclusion of this language, in case a subsequent court decision led to a change in the requirements on the Company.

GTE’s representative, Mr. Minor, initially expressed surprise that such a clause was in the Agreement.  He later confirmed the clause was in agreements that had been approved by other states.  Mr. Minor was informed that Staff would recommend disapproval of the Agreement unless GTE could provide a valid reason for the inclusion of the clause.  GTE had not responded as of the deadline for comments in this proceeding.

STAFF RECOMMENDATION

Staff finds this Agreement to be contrary to the letter and intent of both the federal and state telecommunications Acts, which encourage competition through the resale of services which this contract specifically prohibits.  When asked by Staff, GTE indicated it intended to violate this clause in the Agreement, and failed to identify a valid reason why language that is directly inconsistent with the federal Telecommunications Act of 1996 is included in this Agreement.  Staff believes this Agreement is contrary to the public interest, and recommends the Commission not approve this Interconnection Agreement as filed.

Should the Commission find otherwise, and approve this Agreement, Staff recommends the Commission make its approval contingent upon GTE making its residential service available for resale.

In addition, the matrix in Appendix A contains a listing of nearly every service that GTE provides, the tariffed rate for that service, an item identified as “avoided cost”, and a wholesale rate, which is the retail rate minus the avoided cost.  Staff has not, nor does it have sufficient information to do so, reviewed the information in the avoided cost column to determine whether it is an accurate representation of the Company’s actual avoided cost.  In the event that the Commission does approve this Agreement, Staff recommends that the Commission include language in its order to clarify that the Commission’s approval of the Interconnection Agreement is not to be construed as an approval or endorsement of any of the specific rates or cost elements identified in the Agreement.

Another alternative for the Commission is to simply not act upon the Application and allow the Agreement to become effective without the Commission’s approval.  If the Commission fails to act upon the Application within ninety days of its submittal, the Agreement will go into effect automatically.

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

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Weldon B. Stutzman

Deputy Attorney General

Technical Staff:  Wayne Hart

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