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

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| IN THE MATTER OF THE ADOPTION OF TEMPORARY AND PROPOSED RULES GOVERNING ACCESS AND INTERCONNECTION IN UNSERVED AREAS, IDAPA 31.42.01.401 ET SEQ. | ))))))))) | CASE NO. 31-4201-9801NOTICE OF PROPOSED RULEMAKING AND TEMPORARY RULESORDER NO. 27674 |

On August 10, 1998, in GNR-T-98-4, the Commission ordered this rulemaking docket be opened.  Order No. 27673.  That case involved an Application for a Certificate of Public Convenience and Necessity to provide facilities-based basic local exchange service to a presently undeveloped area within U S WEST’s certificated area.  No facilities-based carrier presently provides basic local exchange service to any customer in Hidden Springs Development.  After considering the merits in that case, the Commission found that conditioning CTC’s Certificate would only protect Hidden Springs Development’s basic local exchange customers and would not address the broader concepts of future applications or those local exchange carriers that have already received certificates for larger service areas.  Rather, the Commission found that adopting rules setting the standards for interconnection and access in unserved areas is the better approach and ordered this Rulemaking docket be opened and temporary rules adopted, effective immediately.

The Commission finds that temporary rules are necessary to promote the public welfare by guaranteeing telephone customers have basic local exchange service provider choices in those areas served by non-incumbent, facilities-based competitive telephone corporations.  The Commission further finds that the temporary rules in Appendix B promote competition throughout local exchange calling areas as envisioned by the legislature in 1997 when it amended the 1988 Telecommunications Act and preclude telephone corporations from creating non-price regulated virtual monopolies depriving customers of choices in providers.  The legislature wrote in 1997:

It is the intent of this legislature that effective competition throughout a local exchange calling area will involve a significant number of customers having both service provider and service option choices and that actual competition means more than the mere presence of a competitor.  Instead, for there to be actual and effective competition there needs to be substantive and meaningful competition throughout the incumbent telephone corporation's local exchange calling area.

Idaho Code § 62-602(2) (emphasis added).

Therefore, the Commission adopts the temporary rules in Appendix B setting standards for providing access and interconnection by Title 62 telephone corporations providing basic local exchange service in unserved areas, effective immediately.  The Commission has authority to promulgate these rules pursuant to Idaho Code §§ 62-602, 62-606, 62-611, 62-614, 62-615, 62-616 and 62-622 and to adopt them as temporary rules, effective immediately, underIdaho Code § 67-5226, IDAPA 04.11.01.840.

BY THIS NOTICE THE COMMISSION ALSO PROPOSES that these temporary rules be adopted and included in Commission’s Title 62 Telephone Corporation Rules (IDAPA 31.42.01) as permanent rules.

Two appendices are attached to this Order and Notice of Proposed Rulemaking.  Appendix A is a Notice of Temporary and Proposed Rules suitable for transmission to the administrative rules coordinator.  Appendix B is the temporary and proposed rule in legislative format.  As explained in Appendix A, the comment deadline for this Notice of Temporary and Proposed Rulemaking is October 29, 1998.

NOTICE OF PROPOSED RULEMAKING

The Idaho Public Utilities hereby gives notice of its proposal to adopt rules setting standards for access and interconnection in unserved areas by Title 62 Telephone Corporations providing basic local exchange service, IDAPA 31.42.01.401 et seq.  The Commission has authority to promulgate these rules pursuant to Idaho Code §§ 62-602, 62-606, 62-611, 62-614, 62-615, 62-616 and 62-622.  The proposed rules to set the standards for providing access and interconnection in unserved areas by Title 62 Telephone Corporations are contained in Appendix B.

PROPOSED by the Idaho Public Utilities Commission at Boise, Idaho this                     day of August 1998.

                                                                                                                                       DENNIS S. HANSEN, PRESIDENT

                                                                                            RALPH NELSON, COMMISSIONER

MARSHA H. SMITH, COMMISSIONER

ATTEST:

Myrna J. Walters

Commission Secretary

IDAPA 31 - IDAHO PUBLIC UTILITIES COMMISSION

31.42.01 - RULES FOR TELEPHONE CORPORATIONS SUBJECT TO THE

REGULATION OF THE IDAHO PUBLIC UTILITIES COMMISSION

UNDER THE TELECOMMUNICATIONS ACT OF 1988

(THE TITLE 62 TELEPHONE CORPORATION RULES)

IDAPA 31.42.01

DOCKET NO.  31-4201-9801

NOTICE OF TEMPORARY AND PROPOSED RULES

AUTHORITY:  In compliance with Section 67-5220(1), Idaho Code, notice is hereby given of the Idaho Public Utilities Commission’s proposed rulemaking.  This action is authorized pursuant to the Commission’s legal authority under the Public Utilities Law, Chapters 1 through 7, Title 61, Idaho Code and the Telecommunications Act of 1988, Chapter 6, Title 62, Idaho Code and the specific authority of Sections 62-602, 62-606, 62-611, 62-614, 62-615, 62-616 and 62-622, Idaho Code.

PUBLIC HEARING SCHEDULE:  A public hearing concerning this rulemaking will be scheduled only if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, no later than October 22, 1998.  The hearing site will be accessible to persons with disabilities.  Request for accommodations must be made no later than five (5) days prior to the hearing, to the Commission’s address set out below.

DESCRIPTIVE SUMMARY: The following is a non-technical explanation of the substance and purpose of the proposed rules:

The proposed new rules adopt interconnection and access standards for facilities-based telephone corporation competitors that provide basic local service in unserved areas.

TEMPORARY RULE JUSTIFICATION:  Pursuant to Sections 67-5226(1)(b) and 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These rules are necessary to protect the public welfare because they promote basic local exchange service provider choices for telephone customers located in areas served only by non-incumbent facilities-based telephone corporations and discourage the development of non-price regulated monopolies.  These rules set standards for providing access and interconnection in unserved areas by Title 62 Telephone Corporations.

NEGOTIATED RULEMAKING:  Pursuant to IDAPA 04.11.01.0811, negotiated rulemaking was not conducted.

ASSISTANCE ON TECHNICAL QUESTIONS:  For assistance on technical questions concerning the proposed rules, contact Cheri C. Copsey, Deputy Attorney General at (208) 334-0314.

DEADLINE FOR WRITTEN COMMENTS:  Anyone may submit written comments regarding these proposed rules.  All written comments and data concerning the proposed rules must be delivered to the Commission Secretary at the address identified above or must be postmarked on or before October 29, 1998.  Persons desiring to comment are encouraged to submit written comments at their earliest convenience rather than wait until the comment deadline.

DATED this               day of   August   1998.

Myrna J. Walters

Commission Secretary

Idaho Public Utilities CommissionStreet Address for Express Mail:

PO Box 83720

Boise, ID 83720-0074472 West Washington Street

Telephone:  (208) 334-0338Boise, ID 83702-5983

FAX:           (208) 334-3762

IDAPA 31

TITLE 42

Chapter 1

Rules for Telephone Corporations Subject to the

Regulation of the Idaho Public Utilities Commission

Under the Telecommunications Act of 1988

(The Title 62 Telephone Corporation Rules)

IDAPA 31.42.01

000.LEGAL AUTHORITY (Rule 0).  These rules are adopted under the general legal authority of the Telecommunications Act of 1988, as amended, chapter 6, title 62, Idaho Code, and the specific authority of sections 62-602, 62-606, 62-611, 62-614, 62-615,and 62-616 and 62-622. (7-1-93)(        )

(BREAK IN CONTINUITY OF SECTIONS)

303. --  999 400.  (RESERVED).

RULES 401 THROUGH 500.  ACCESS AND INTERCONNECTION STANDARDS

 IN UNSERVED AREAS.

401.DEFINITIONS (Rule 401).  As used in Rules 401 through 412:

01.Facilities-based competitor. “Facilities-based competitor” means a non-incumbent telephone corporation that offers basic local exchange service exclusively over its own telecommunications service facilities or predominantly over its own facilities in combination with the resale of telecommunications services of another carrier.(        )

02.Incumbent telephone corporation. “Incumbent telephone corporation” means a telephone corporation or its successor which was providing basic local exchange service on or before February 8, 1996.(        )

03.Network element. “Network element” means a facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service.

(        )

04.Non-incumbent telephone corporation. “Non-incumbent telephone corporation” means a telephone corporation which was not providing basic local exchange service on or before February 8, 1996.(        )

05.Rural telephone company. “Rural telephone company” means a telephone corporation that:(        )

a.Provides basic local exchange service to a service area 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 basic local exchange service including exchange access, to fewer than fifty thousand (50,000) access lines;

(        )

c.Provides basic local exchange service to any service 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.

(        )

06.Telephone corporation. “Telephone corporation” means every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, providing basic local exchange services for compensation within this state, except municipal, cooperative, or mutual nonprofit telephone companies, or telephone corporations providing radio paging, mobile radio telecommunications services, answering services (including computerized or otherwise automated answering or voice message services), or one-way transmission to subscribers of video programming, or other programming service, and subscriber interaction, if any, which is required for the selection of such video programming or other programming service or surveying are not included.(        )

07.Unbundled element. “Unbundled element” means a single network element that a competitor telephone corporation may lease on its own, or if the competitor telephone corporation wishes, in combination with other elements.(        )

08.Unserved area. “Unserved area” means a geographic area in which no incumbent telephone corporation has facilities providing basic local exchange service to customers.(        )

402.INTERCONNECTION STANDARDS.  (Rule 402)

If a facilities-based competitor builds facilities to provide basic local service within an unserved area, it shall provide interconnection with its network for the facilities and equipment of any telephone corporation requesting the transmission and routing of telephone exchange service.(        )

403.EXCHANGE ACCESS QUALITY STANDARDS.  (Rule 403)

If a facilities-based competitor builds facilities to provide basic local service within an unserved area, it shall provide exchange access at any technically feasible point within its network that is at least equal in quality to that provided to itself or to any subsidiary, affiliate, or any other party to which it provides interconnection. (        )

404.UNBUNDLED ACCESS STANDARDS.  (Rule 404).

If a facilities-based competitor builds facilities to provide basic local service within an unserved area, it shall provide nondiscriminatory access to network elements to any telephone corporation requesting provision of a telecommunications service on an unbundled basis at any technically feasible point and shall provide such unbundled network elements in a manner that allows requesting telephone corporations to combine such elements in order to provide basic local exchange service.(        )

405.RESALE STANDARDS.  (Rule 405).

If a facilities-based competitor builds facilities to provide basic local service within an unserved area, it shall offer any telecommunications service for resale at wholesale rates that it provides at retail to subscribers who are not telephone corporations and shall not prohibit or impose unreasonable or discriminatory conditions or limitations on the resale of such telecommunications service.(        )

406.PHYSICAL COLLOCATIONSTANDARDS.  (Rule 406).

If a facilities-based competitor builds facilities to provide basic local service within an unserved area, it shall provide for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the telephone corporation, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.(        )

407.EXEMPTION FOR VIRTUAL COLLOCATION.  (Rule 407).

If a facilities-based competitor builds facilities to provide basic local service within an unserved area, it may provide for virtual collocation if it demonstrates to the commission that physical collocation is not practical for technical reasons or because of space limitations.(        )

408.VOLUNTARY NEGOTIATION.  (Rule 408).

Upon receiving a request for interconnection, services, or network elements, a facilities-based competitor that built facilities to provide basic local service within an unserved area may negotiate and enter into a binding agreement with the requesting telephone corporation without regard to the standards set forth in Rules 402 through 407.  The agreement shall include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement and shall be submitted to the commission for approval.  (        )

409.VOLUNTARY NEGOTIATION.  (Rule 409).

Any party negotiating an agreement under Rule 408 may, at any point in the negotiation, ask the commission to participate in the negotiation and to mediate any differences arising in the course of the negotiation.(        )

410.REFUSAL TO NEGOTIATE.  (Rule 410).

The refusal by any party to negotiate pursuant to Rule 408, to cooperate with the commission in carrying out its function as an arbitrator, or to continue to negotiate in good faith in the presence, or with the assistance, of the Commission shall be considered a failure to negotiate in good faith(        )

411.PETITION FOR SUSPENSION OF RULES 402-410.  (Rule 411).

If any facilities-based competitor that is a rural telephone company petitions the commission to suspend the application of Rules 402 through 410, the Commission shall grant the petition and suspend the application of Rules 402 through 410 for a period of not less than three (3) years nor more than five (5) years.

(        )

412.PETITION FOR EXEMPTION FROM RULES 402-410.  (Rule 412).

Any facilities-based competitor may petition the commission to exempt it from the application of Rules 402 through 410.  The commission may grant the petition if the petitioner demonstrates there are functionally equivalent, competitively priced basic local services reasonably available to both residential and small business customers within the unserved area from a telephone corporation unaffiliated with the petitioner.(        )

413.EFFECTIVE DATE.  (Rule 413).

The commission adopted Rules 401 through 413 by Order No.27674 issued on August 10, 1998, in docket number 31-4201-9801.  The effective date for these rules is the date of that Order,August 10, 1998.

(        )

414. -- 999  (RESERVED).(        )

**COMMENTS AND ANNOTATIONS**

Text Box 1:

**TEXT BOXES**

Office of the Secretary

Service Date

August 11, 1998